

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

39
CAUSE NO: FSD OF 2014

0639

BETWEEN:

ACCESS BANK PLC



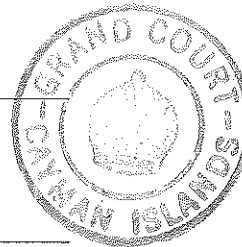
Plaintiff

- and -

ERASTUS BANKOLE OLADIPO AKINGBOLA

Defendant

WRIT OF SUMMONS



TO: Erastus Bankole Oladipo Akingbola
Adura Lere House,
12 Ruxton Road,
Ikoyi, Lagos,
Nigeria

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495, George Town, Grand Cayman KY1-1106, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 1st day of April 2014.

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

The Parties

1. The Plaintiff is a bank incorporated in Nigeria.
2. The Defendant ("**Mr Akingbola**") was, until 14 August 2009, the Managing Director of Intercontinental Bank plc ("**Intercontinental**").
3. Intercontinental was a bank incorporated in Nigeria, which merged with the Plaintiff pursuant to a merger sanctioned by an Order of the Federal High Court of Nigeria dated 23 January 2012. The terms of the merger stipulated that all assets, liabilities and undertakings were transferred from Intercontinental to the Plaintiff.

English Proceedings

4. On 23 December 2009 proceedings were issued by Intercontinental against the Defendant in the High Court of England and Wales (the "**English Court**") with cause number 2009 Folio 1680 (the "**English Proceedings**"). Following the merger referred to in paragraph 3 above, the Plaintiff was substituted as claimant in the English Proceedings in place of Intercontinental. It was entitled to prosecute Intercontinental's claim against the Defendant pursuant to the terms of the merger.
5. Five companies connected to Mr Akingbola were joined as second to sixth defendants to the English Proceedings during the course of those proceedings. No claim is presently advanced against those companies in the instant proceedings.
6. At the time when the English Proceedings were issued and served on Mr Akingbola, he was voluntarily present in the jurisdiction and a resident of the jurisdiction, having as his place of residence 26 Chester Terrace, London NW1 4ND. Accordingly, the English Court had jurisdiction and was competent to hear the claim against Mr Akingbola and enter judgment against him.
7. Further or alternatively, Mr Akingbola, as first defendant to the English Proceedings, submitted to the jurisdiction of the English Court. He participated fully in the English Proceedings and instructed solicitors and leading counsel to represent him at a trial of the substantive merits of the claim which took place over 26 court days between April and June 2012. Mr Akingbola argued, through his counsel, that he was not liable in respect of each and every claim brought against him and in respect of each and every claim upon which the judgment was given against him (as to which, see below). Accordingly, Mr Akingbola submitted to the English Court in respect of each of the claims giving rise to the judgment.

8. Following the substantive trial in the English Proceedings, the presiding judge, Mr Justice Burton, handed down a fully-reasoned judgment dated 31 July 2012 (the "**English Judgment**"). The English Judgment is 66 pages long and has 148 numbered paragraphs. In addition the English Court handed down an Order, dated 13 September 2012 and sealed on 19 October 2012 (the "**English Order**"). Mr Akingbola is bound by the English Judgment and the English Order for the reasons given in paragraphs 6 and 7 above.
9. The English Judgment and the English Order are exhibited hereto as exhibits 1 and 2 respectively.
10. As is apparent from the English Judgment and the English Order, judgment was given against Mr Akingbola inter alia for the following sums:
 - a. ₦191,798,591,572.69 (paragraph 3 of the English Order);
 - b. ₦20,495,497,587.82 (paragraph 4 of the English Order); and
 - c. Interest on (b) and (c) above at the Judgments Act rate of 8% per annum for the period from 14 September 2012 until payment (paragraph 5 of the English Order).
11. The English Order also awards the Plaintiff its costs of the English Proceedings, to be paid by Mr Akingbola and to be assessed (taxed) if not agreed (paragraph 19). At paragraph 20 Mr Akingbola is required to pay the sum of £1.8 million on account of costs into the Plaintiff's English solicitors' client account.
12. Pursuant to paragraphs 10 and 11 of the English Order the Plaintiff was to receive a payment out of Court of certain sums then held in Court, and the Plaintiff was required to give credit for that payment set against Mr Akingbola's liabilities described in paragraph 4 of the English Order. Pursuant to those paragraphs the Plaintiff received the sum of £237,321.92 on 5 December 2012. At the then prevailing rate of exchange of ₦250.186: £1 as shown on the website of the Central Bank of Nigeria (www.cbn.org) this was equivalent to ₦59,371,621.87.
13. The English Order makes further declarations and provisions with regard to the beneficial and proprietary rights of the Plaintiff over various assets, and the Plaintiff's obligations to give credit against those beneficial and proprietary rights for sums already received by the Plaintiff (see paragraphs 6, 7, 8 and 9 of the English Order). For the avoidance of doubt the Plaintiff does not presently seek any relief in these proceedings in relation to those paragraphs of the English Order.
14. The English Judgment is final and conclusive. Mr Akingbola applied to the English Court for leave to appeal and this application was refused (paragraph 21 of the English Order). Mr Akingbola then sought leave to appeal from a single judge of the Court of Appeal of England and Wales ("**EWCA**"). The EWCA dismissed this application. The Order of the EWCA dated 11 February 2013 is exhibited hereto as exhibit 3.

15. Insofar as the English Order consists of a monetary judgment for a specified sum against Mr Akingbola, it records a debt payable by Mr Akingbola to the Plaintiff in the following sums:
- a. ₦212,294,089,160.51, less the sum of £237,321.92 received on 5 December 2012, which at the then prevailing rate of exchange of ₦250.186: £1 as shown on the website of the Central Bank of Nigeria (www.cbn.org) was equivalent to ₦59,371,621.87;
 - b. Interest on the sum of ₦212,294,089,160.51 at 8% per annum from 14 September 2012 until 5 December 2012, or ₦46,530,211.32 per day, and interest from 6 December 2012 on ₦212,234,714,539 at 8% per annum, or ₦46,517,197.71 per day. As at 31 March 2014 the interest component of the debt due stood at ₦26,236,766,623; and
 - c. £1.8 million.
16. These sums, which total ₦238,471,484,162 and £1.8 million, remain due and owing to the Plaintiff.

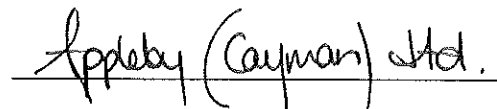
Relief Sought

17. The Plaintiff now seeks the entry of a judgment in this Court against Mr Akingbola, in the amount of ₦238,471,484,162 plus £1.8 million.
18. The Plaintiff is also entitled to interest on the requested Judgment from the Defendant from 1 April 2014 at the rate of 8% per annum pursuant to Section 34 of the Judicature Law (2007 Revision) or at such rate and for such period as the Court thinks fit.

AND THE PLAINTIFF CLAIMS:

- (1) Judgment in the amount of ₦238,471,484,162 plus £1.8 million;
- (2) Interest from 1 April 2014 at the rate of 8% per annum pursuant to Section 34 of the Judicature Law (2013 Revision) or at such rate and for such period as the Court thinks fit; and
- (3) Such further or other relief as the Court thinks fit.

Dated the 1st day of April 2014



Appleby (Cayman) Ltd.

THIS WRIT was Issued by Appleby (Cayman) Ltd., Attorneys-at-Law for the Plaintiff, whose address for service is that of their Attorneys-at-law, Clifton House, 75 Fort Street, PO Box 190, George Town, Grand Cayman, Cayman Islands KY1-1104 (Ref: CR/RC/403008.0008).

Acknowledgement of service of writ of summons (0.12, r.3)

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See over for notes for guidance

Please complete overleaf

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 20__

BETWEEN:

PLAINTIFF

AND:

DEFENDANT

ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

yes no

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

yes no

Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for

Please complete overleaf

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2014

BETWEEN:

ACCESS BANK PLC

Plaintiff

- and -

ERASTUS BANKOLE OLADIPO AKINGBOLA

Defendant

Exhibit 1



Neutral Citation Number: [2012] EWHC 2148 (Comm)

Case No: 2009 Folio 1680

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2012

Before :

MR JUSTICE BURTON

Between :

ACCESS BANK PLC

Claimant

- and -

- (1) Erastus Bankole Oladipo Akingbola**
- (2) Kayman Company Ltd**
- (3) Verndale Properties Ltd**
- (4) Jasmine Properties Ltd**
- (5) Caelum Ltd**
- (6) Sanami Ltd**

Defendants

**MR SIMON BROWNE-WILKINSON QC and MR ADAM ZELLICK (instructed by
Berwin Leighton Paisner LLP) for the Claimant**
**MR PAUL CHAISTY QC (instructed by Peters & Peters Solicitors LLP) for the First
Defendant**

Hearing dates: 23, 24, 25, 26, 27, 30 April, 1, 2, 3, 4, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23,
24, 30, 31 May and 1 June 2012

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

MR JUSTICE BURTON

Mr Justice Burton :

1. The Claimant, formerly Intercontinental Bank plc (where separately referred to, "IB"), but since January 2012 Access Bank plc, which merged with IB in 2011, sues Dr Erastus Akingbola ("the Defendant") for very substantial sums in these proceedings: although the Defendant is the First Defendant, the other Defendants are companies in which it is accepted that he has, directly or indirectly, an interest, and who, having been joined simply for the purposes of any tracing claim, have taken no part in the proceedings.
2. The Defendant was the Managing Director (known as the Group Chief Executive ("GCE")) and a substantial shareholder in IB at all material times until 14 August 2009, when he was removed by the Governor of the Central Bank of Nigeria ("CBN") in exercise of his statutory powers under the Banks and Other Financial Institutions Act 1991 ("BOFIA"), following an investigation by the CBN into the affairs of IB. The Defendant was also a director of two subsidiaries of IB, Intercontinental Capital Markets Ltd ("ICML") and Intercontinental Securities Ltd ("ISL"); the latter was, although in-house, one of the three stockbrokers used during the material time by IB. In addition, the Defendant was a director and shareholder of the companies in the Tropics Group of Companies ("Tropics" of "the Tropics Group").
3. The consequence of the events related in these proceedings was, as the Claimant asserts, the collapse of IB, its very substantial loss after taxation in the period up to September 2009 (approximately 321 billion Naira ("N321bn"), the equivalent of about £1.3bn, at the material exchange rate, being approximately N250 to the £), the intervention into IB by CBN, and the consequence that IB could no longer survive as a free-standing bank and had to be acquired and merged into the Claimant. Prior to its collapse, IB was one of Nigeria's top four banks, it employed some 20,000 people and it had some 350 branches.
4. Although this is asserted by the Claimant to be the background to the claim against the Defendant, and the Defendant does not accept that the intervention of CBN was necessary, the Claimant's claims against the Defendant are of course put with reference to the alleged individual conduct of the Defendant during the period prior to August 2009. There are three areas of claim:
 - i) The Unlawful Share Purchase Claim. The Claimant claims that there was, from 2007, a Strategy, spearheaded, or at any rate known to and participated in, by the Defendant, of IB's buying its own shares in very substantial quantities. The pleading, in paragraph 22 of the Re-re-amended Particulars of Claim ("the Particulars of Claim"), is as follows:

"Between about April 2007 and August 2009, the Defendant procured, operated, approved and/or orchestrated a share purchase or support scheme by which, under his direction, the Claimant was caused to purchase or acquire with its own funds shares issued by it."

I call this "the Unlawful Share Purchase Claim".

Although the Defendant denies that there was, and/or in any event that he was part of, any such unlawful share scheme, it is common ground that the shares in question (colloquially called, as will be seen, “the shares in the box”) amounted to at least 3.7bn shares, purchased for, and consequently valued at, N140,969,395,021. It is not materially in dispute that the Claimant’s resultant claim, after various credits and debits, is (as appears in paragraph 92 below) N144,992,748,108. As will appear below, if the Claimant does not succeed in respect of its second head of claim (“the Tropics payments”) on the basis set out in (ii) below, then the amount of the Tropics payments fall to be added to the amount it seeks under this head.

- ii) The Tropics Payments Claim. This relates to a total sum of N18,684,500,000 (approximately £68m) in respect of monies paid away by the Claimant to, or to the benefit of, various companies in the Tropics Group, of which, as set out in paragraph 2 above, the Defendant was a director, and which he, and/or his wife or family, directly or indirectly owned, between 11 May and 26 June 2009. The plea is summarised in paragraph 5 of the Particulars of Claim.

“In breach of the duties owed by the Defendant to the Claimant ... the Defendant misappropriated the Claimant’s monies ... and caused or directed such monies to be paid to or for the benefit of entities which he owned and/or controlled and/or which he was interested in, directly or indirectly, or to his own benefit or to the benefit of his family or for his own business or investment purposes.”

While denying liability in respect of such payments, the Defendant’s case is that the monies were paid to or to the order of Tropics in repayment of sums owed to Tropics as stockbrokers by the Claimant, in respect of purchases which in or about summer 2008 Tropics had laid out for the purchase of shares in IB on IB’s instructions. It is in those circumstances that the Claimant responds that, if such were the case, then the sum of N18,684,500,000 falls to be added to the Unlawful Share Purchase Claim in (i) above.

- iii) The Fuglers Claims. The third head of claim relates to two transfers caused or directed by the Defendant to be made by IB to the client account of Messrs Fuglers (in association with David Berens & Co) LLP, London solicitors (“Fuglers”), namely £8,540,134.58 on 11 March 2009 (“Fuglers 1”) and £1.3m on 13 July 2009 (“Fuglers 2”), which were used for the purchase of property to or to the order of the Defendant (and variously involving the other Defendant companies to which I have referred in paragraph 1 above). These are the “Fuglers Claims”, but, as will appear, there are credits to be made in respect of repayments upon the sale, since the start of these proceedings, of properties, and, in any event, as will appear, the Claimant concedes that it will not proceed in respect of the Fuglers 2 payment if it is successful in respect of the Tropics claims.

5. The litigation began in this country, not only because the Fuglers Claims related to (and led to injunctive relief in respect of) properties in the UK, but primarily because the Defendant left Nigeria and was, at the time of service of these proceedings, resident in London. The proceedings began in respect of the Fuglers Claims only on

23 December 2009, when an initial Freezing Order was made by Nicol J, increased by Blair J on 25 January 2010 to include the Tropics Payments Claim and continued until judgment or further order by Christopher Clarke J on 12 February 2010. The Particulars of Claim were amended to add the Unlawful Share Purchase Claim in July 2010.

6. The Claimant brought a Part 24 Summary Judgment application, which was heard before me on 3 and 4 March 2011, and I gave judgment on 23 March 2011. It was not issued in respect of the Unlawful Share Purchase Claim, and, although originally issued in respect of the Fuglers payments, as appears from paragraph 4 of my Judgment, interlocutory undertakings were given by the Defendant in respect of the Fuglers 1 payment and, as appears from paragraphs 65 to 66 of that Judgment, a concession was made in relation to the Fuglers 2 payment similar to that described by me in paragraph 4(iii) above, such that the only live issue before me was whether I should grant summary judgment in respect of the Tropics Payments Claim. As appears from paragraph 62 of my Judgment, I concluded "*that the asserted defence put forward as to the £68m Tropics payments is very shadowy indeed*", and I gave leave to defend conditional upon a substantial payment into court, in default of which there would be judgment for the N18.6bn. After a number of subsequent hearings, there were substantial payments into court derived from the sales of the various UK properties, although, upon the non-opposition of the Claimant, a considerable sum otherwise paid into court has been permitted to be used by the Defendant for the purposes of his legal fees in defending this action.
7. This case came on for trial on 23 April 2012, and the Claimant has been represented, as it was before me in the Summary Judgment application, by Mr Simon Browne-Wilkinson QC and Mr Adam Zellick, instructed by Messrs Berwin Leighton Paisner LLP. The Defendant, although still instructing the same solicitors, Messrs Peters & Peters Solicitors LLP, has been represented for some time and for the purposes of this hearing by Mr Paul Chaisty QC. The hearing lasted for 26 days, concluding on 1 June 2012, subject only to the subsequent delivery of some short additional supplementary submissions/references. It took a somewhat unusual course, because the Defendant and three of his witnesses, Mr Akin Fabunmi, Mr Ayodele Thomas and Mr Bayo Dada, are all defendants in continuing proceedings relating to the same or similar matters as are in issue in these proceedings, and have not been able to leave Nigeria. After considerable discussion and with the agreement of all parties, the course was taken whereby opening submissions by both Counsel and the evidence for the Claimant were given in the Commercial Court in London in the normal way, with a video link so that the Defendant in Nigeria, with his Nigerian lawyers, could listen to and watch the hearing in London, with a contemporaneous transcript in addition. At the close of the Claimant's case, the Counsel and solicitors for both parties flew to Nigeria, and the evidence of the Defendant and his witnesses was given in Nigeria, where Counsel for both parties examined, cross-examined and re-examined them. I sat in London with the benefit of the same video conferencing facilities and contemporaneous transcript. Although the equipment broke down very occasionally, and there was a small time-lag which inevitably meant that on occasions I would find myself speaking over Counsel or the witness, and/or Counsel or the witness would speak over me, there was in the event remarkably little difficulty and all parties have made the necessary accommodations. In particular, I have been invited to, and do, make allowances for the pressures under which the Defendant and his witnesses were

occasionally working when faced with questioning in Nigeria and intervention from London. I am satisfied, as I believe are the parties, given the cogency and completeness of the submissions by reference to the evidence that they have been able to put before me, and in particular by dint of studying the transcript which, although occasionally losing track during the giving of the evidence, was very diligently and ably made and corrected by the staff, respectively in Nigeria and London, of Messrs Wordwave International Ltd, that the hearing did not materially suffer from its bifurcated nature.

8. I shall deal first in this judgment with the Unlawful Share Purchase Claim, because it is easily the largest claim in terms of quantum, because it is simpler to address first in that it involves consideration of the whole period, into which the facts of the other claims can satisfactorily slot when I deal with them later in this judgment, and because of the alternative basis for the Tropics Payments Claim, to which I have referred in paragraph 4(ii) above.

The Unlawful Share Purchase Claim

9. As I have set out above, there is in fact no dispute about the basic facts of the shares "in the box". The department of the Bank responsible for the execution of the share purchases was the Securities Dealing Services department ("SDS"), which, during the material period was headed by Mrs Afolake Akingbade. SDS carried out a reconciliation of the shares in the box, purchased by the three brokers who acted for IB in relation to their purchase, ISL, Tropics and Summit Finance Ltd ("Summit"), as at December 2008, which totalled (by reference to amounts paid for the shares at the identified dates) N140,969,395,020.83. This ties in exactly with the "*Schedule of IB plc shares purchased*", totalling N140,969,395,021 and identifying the same shares, though on this occasion totalling the shares, as 3,748,070,511; the three brokers were again identified in respect of each purchase, but helpfully now in chronological order, showing the first purchase at 31 August 2007 and the last at 27 August 2008. This latter Schedule was attached to a memo dated 22 October 2008 from Mr Fabunmi, then Executive Assistant to the Defendant (GCE), addressed "*To Group Chief Executive through ED [Executive Director] (Investment Banking and Subsidiaries)*", being Mr Olayinka Adebisi ("the October Memo").
10. There is also common ground as to the law. Each side instructed a Nigerian law expert, the Claimant instructing Dr Tunde Ogowewo, and the Defendant, a Mrs Ayoola Modupe Ogunsola Obe, but, in the event, it was the report of Dr Ogowewo which was agreed, as was made clear by the subsequent Joint Statement by the Experts. The position is as follows:
 - i) Statutory Provisions.
 - a) S160 of the Companies and Allied Matters Act ("CAMA") provides, with certain exceptions not relevant in this case, straightforwardly that "*a company may not purchase or otherwise acquire shares issued by it*".
 - b) S159, headed "*Prohibition of financial assistance by company for acquisition of its shares*" provides as follows:

“(1) In this section, financial assistance includes a gift, guarantee, security or indemnity, loan, any form of credit and any financial assistance given by a company, the net assets of which are thereby reduced to a material extent or which has no net assets.

(2)(a) where a person is acquiring or is proposing to acquire shares in a company, it shall not be lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place; and

(b) where a person has acquired shares in a company and any liability has been incurred (by that or any other person), for the purpose of this acquisition, it shall not be lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.

3. Nothing in subsection (1) of this section shall be taken to prohibit

(a) the lending of money by the company in the ordinary course of its business, where the lending of money is part of the ordinary business of a company;

...

(c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully paid shares in the company or its holding company, to be held by themselves by way of beneficial ownership ...”

- c) It is common ground that if the Defendant was party to an unlawful scheme, resulting in the unlawful expenditure of at least N140bn of IB's funds, then s283 of CAMA would apply, whereby:

“Legal position of directors.

Directors are trustees of the company's moneys, properties and their powers and as such must account for all the moneys over which they exercise control and shall refund any moneys improperly paid away, and shall exercise their powers honestly in the interest

of the company and all the shareholders, and not in their own or sectional interests.”

ii) English Authorities

a) It is agreed between the experts that, although English decisions are not part of Nigerian law and not binding on Nigerian courts, they are nevertheless of highly persuasive value, and that, in the instant case, the two relevant English authorities on the issue of what would qualify for the exception to s159 provided for in s159(3)(a) would be followed by the Nigerian courts. Those authorities are as follows:

- **Steen v Law** [1964] AC 287. In that case an arrangement was effected by the three shareholders of company A to sell their shares to company B for £200,000, such sum being loaned for that purpose by company A to company B without security. Viscount Radcliffe, delivering the judgment of the Privy Council, stated as follows:

“This proviso, then, must be read not as exempting particular loan transactions made for identifiable purposes but as protecting a company engaged in moneylending as part of its ordinary business from an infraction of the law, even though moneys borrowed from it are used and, perhaps, used to its knowledge, in the purchase of its own shares. Even so, the qualification is imposed that, to escape liability, the loan transaction must be made in the ordinary course of its business. Nothing, therefore, is protected except what is consistent with the normal course of its business and is lending of a kind which the company ordinarily practises.”

- In **Fowlie v Slater** [1979] NLJ 465, the Divisional Court (Lord Widgery LCJ, Michael Davies and Neill JJ) was dealing with an appeal by the prosecutor in respect of the acquittal of the defendant company, which had below succeeded in bringing itself within the exception (equivalent to that in s160 of CAMA) to s54(1) of the **Companies Act 1948**; the Respondent company (SW Ltd) was an authorised bank, such that lending of money was part of its ordinary business, but the loans in question by SW Ltd to a third party company for the purpose of its purchase of shares in SW Ltd’s parent company was not within the exception:

“Although the lending of money was no doubt part of the ordinary business of the company, the lending was not “in the ordinary course of business”. The loan was not at the free disposition of the borrower but was specifically

and solely for the purchase of shares in the lender's holding company. Further the loan was not for the benefit of the borrower": [Steen v Law was applied].

- b) Again it was not in issue between the experts, and hence the parties, that, for the purpose of consideration of the Defendant's liability to reimburse the Claimant in the context of s283 of CAMA, the principles in **Selangor United Rubber Estates Ltd v Cradock** [1968] 1 WLR 1555, **Belmont Finance Corporation v Williams Furniture Ltd** [1981] AER 393 and **Guinness PLC v Saunders** [1988] BCLC 43 would apply: the payment away of monies in breach of trust, being payments in respect of the purchase of a company's own shares or by way of unlawful financial assistance, renders the trustee director liable to restore the funds to the Claimant.
11. There is also no dispute as to the applicability of the authorities relating to the onus of proof. Whether the claim is based upon dishonesty (as would be the case if the Defendant misappropriated the Tropics payments) or upon the commission of a criminal offence by reference to unlawful financial assistance (and the Defendant is being prosecuted in Nigeria in that respect), the claims are "*serious allegations*". Fraud must be distinctly alleged and distinctly proved (a well known proposition, but Mr Chaisty refers to its reinforcement (by reference to authorities) by Lewison J in **Mullarkey v Broad** [2007] EWHC 3400 (Ch)); and, as made clear in **re H (Minors)** [1996] AC 563, the more serious the allegation the stronger should be the evidence, before the Court concludes that the allegation is established on the balance of probability.
12. The Claimant's case commences with the common ground that the purchases of the shares in the box were executed, through the three brokers, by SDS, and, once acquired, they were "*warehoused*" in accounts at the Central Securities Clearing System ("CSCS") in the name of ICML, held by the relevant broker. The payment for all these shares was made by the Bank to the various brokers out of a prepayment account (apparently marked the PRPMT Account in the general ledger of the Bank), and was each month netted off against a Time Deposit account in the general ledger account (which consisted of the aggregate of depositors' credit balances). The Claimant's case is that there is no indication anywhere in the Bank's books of a payment being made by, or debited to, a customer of the Bank in respect of such purchases.
13. Of the shares in the box scheduled by SDS (referred to in paragraph 9 above) purchased between August 2007 and August 2008, some 74% were subsequently transferred or "*crossed over*" into the names of various companies. The Claimant categorises the latter ("*crosses*") as follows. Category 1 consists of some seven companies, all of whom made applications to IB for a loan, either expressly to purchase shares in IB or to purchase shares in "*blue chip companies*", which the Claimant asserts means, but which the Defendant contends includes, shares in IB; there is a small category, sometimes called Category 4, with which I will not hereafter deal, which relates to companies who made such an application but to whom, in the event, no shares were '*crossed*'. Category 2 are companies owned or controlled by various directors of IB, all of whom, in separate letters dated 14 and 16 May 2008

addressed to the Defendant, applied for an 8 billion Naira facility, in the case of four of the letters stating for "*investment purposes as earlier discussed with you*". Category 3 is a number of customers who had already existing non-performing loans from IB, who, the Claimant alleges, were not parties to, and/or had no knowledge of the crossing of shares to them.

14. On the Claimant's case, according to its records, none of the Category 2 or Category 3 'crossees' ever paid for those shares, or paid off any part of the loans said to have financed the 'purchase' and only one of the seven Category 1 crossees, Mapron & Jeluz Ltd ("M & J") ever paid off any part of the loans said to have been allocated to them. All of the transactions by which the shares in the box were said to have been crossed either to Category 1, Category 2 or Category 3 entities were subsequently 'reversed' or cancelled, in or about June 2009, many with the express approval of the Defendant: the M & J transaction was only cancelled after the Defendant's departure from the Bank.
15. The Claimant's case is sought to be made against the Defendant largely by reference to documents, and the conclusions which it asserts must be drawn from them. The Claimant has called no 'live' witnesses, in the sense of any witnesses giving direct evidence. The only oral evidence the Claimant has called is from two investigators. Mr Abdulraheem Yinka Jimoh was (prior to IB's merger with Access) the Head of the Inspection Group for the Claimant. He holds a Masters Degree in Business Administration, and has been a banker for over 20 years. He joined IB in October 2007 as an Assistant General Manager (Group Executive, Credit Risk Management) and in 2009 became Chief Inspector, heading the Bank's Inspection Group. He made three witness statements and gave evidence over four days. He was assisted by Mr Tunde Aro, who is a chartered accountant and also holds a Masters Degree in Business Administration. He moved into banking in 2001 and joined the Claimant in 2005, becoming Head of Foreign Operations Control in January 2007. He made six witness statements, and gave evidence over seven days.
16. Although Mr Jimoh played some part in the events between 2007 and 2009 by virtue of his role in the Credit Risk Department, effectively neither he nor Mr Aro had any evidence of their own to give, but were in substance the mouthpieces of the Claimant, by reference to the witness statements which they had given, which had sought to analyse and explain the documents on which the Claimant relied, and, by virtue of their being each very thoroughly cross-examined by Mr Chaisty on behalf of the Defendant.
17. I shall return to the critique which Mr Chaisty makes of the Claimant's case, given its primary reliance on the documents, and of the investigations which Mr Jimoh and Mr Aro carried out, and which Mr Chaisty submits to have been inadequate. As I have said, no other live witnesses were produced by the Claimant: Mr Jimoh and Mr Aro were extensively questioned about this. Their case can really be summarised as being that almost everybody with any relevant evidence to give left the Bank when CBN intervened and subsequently the Bank was massively run down and then merged; and they are either uncontactable or unwilling or unlikely to be co-operative, and/or are themselves the subject of criminal or regulatory proceedings in Nigeria. There are 36 defendants, apart from IB and the Defendant, in proceedings brought by the Nigerian Securities & Exchange Commission in the Investment and Securities Tribunal in Abuja, including Mrs Akingbade and Mr Adebiyi, Summit and its director Mr

Owolabi, Tropics Securities Ltd (“Tropics Securities”) and its director Mr Dada and at least two other directors of IB, Dr Obieri and Mr Enuha. The Claimant relies, as I shall describe, on hearsay statements from Mrs Akingbade and Mr Owolabi of Summit, being witness statements made in those (or their predecessor) proceedings, on a sworn affidavit by Mr Olayinka Olusola, Mr Fabunmi’s predecessor in charge of Financial Control, and a witness statement from Mr Alabi, who became Managing Director of the Claimant upon the intervention of CBN in August 2009, after the Defendant’s removal. As will be seen, the Claimant relies upon the contents of those hearsay statements, more particularly the first three, since Mr Alabi’s evidence is not central to these proceedings, and also upon what was said in early 2010 by Mr Olonade, Mr Fabunmi’s successor as Head of Financial Control, in his contemporaneous memos, rendered admissible by CPR 33.2.

18. The Defendant’s case is put forward by way of oral evidence. He produces no documents which can be said to ‘exculpate’, but his case is that he can satisfactorily explain the documents upon which the Claimant relies and, given that they are not calling any live evidence, that they are in no position to rebut what he says, the onus of course lying upon the Claimant. As will be seen, his explanation is that all the shares in the box were purchased on behalf of customers, and that the Claimant’s role was limited to ‘*matching buyers and sellers*’. So far as concerns witnesses with regard to the share purchase scheme claim, he has called, and relies upon, Mr Fabunmi, and Mr Dada, the General Manager of Tropics Securities (who was also a non-executive director of IB). The latter reported to the Defendant’s wife Mrs Akingbola, who was Managing Director of Tropics Finance and Investment Ltd (“Tropics Finance”) and a director of other companies within the Tropics Group; and who, although she produced a witness statement for the purposes of the Part 24 application, which has not been relied upon at this hearing, has not given any evidence at this trial. I shall refer further below to their evidence, and to that of the Defendant.
19. On this aspect of the case, Mr Thomas, whom the Defendant also called as a witness in relation to the Fuglers Claims, did not appear to be able to give any relevant evidence in support of the Defendant. He made it clear, in paragraph 3 of his third witness statement, that he “*was not aware at any material time that ICML held any shares in the Bank*” (with an immaterial exception). The Defendant’s other live witness, Mrs Ayoola Ayinde, gave evidence only in relation to the Fuglers Claims. The Defendant himself produced two affidavits (sworn in relation to the Freezing Order) and nine witness statements, and gave evidence over eight days (plus a very brief recall). Mr Fabunmi gave evidence over two days and Mr Dada for one.
20. Before I seek to summarise the documents, it is right briefly to return to the pleadings. I have referred in paragraph 5 above to the fact that the proceedings began without the Unlawful Share Purchase Claim, which was only amended in subsequently, pursuant to my Order of 13 July 2010. By that time the Defendant had served a Defence and Counterclaim dated 19 March 2010 (settled by his then leading Counsel) and had served a lengthy witness statement dated 1 April 2010. Both were dedicated towards the Defendant’s defence to the Tropics Payments Claim, and the case (referred to in paragraph 4(ii) above and to be developed below) that the 18 billion Naira caused to be paid by IB to Tropics in May and June 2009 was in respect of reimbursement to Tropics of what Tropics had laid out in buying shares in IB at IB’s request. The Defendant’s Defence and Counterclaim read (in material part) as follows:

“37. From about April or May 2007 and at all material times thereafter, the Bank engaged three stockbroking firms, namely Tropics Securities, Summit Finance Limited (“Summit”) and Intercontinental Securities Limited (“ISL”) (one of the Bank’s subsidiaries) ... in respect of various stockbroking transactions, including the purchase of shares (“the Share Transactions”). All (alternatively, a substantial part) of the Share Transactions were for shares in the Bank itself. [my underlining]

...

41. In settlement of debts owing to Tropics Securities arising from its execution of Share Transactions from time to time, and in response to written requests for payment, the Bank made a number of payments to and/or at the direction of Tropics Securities. These payments each related to the purchase of shares which were made on the Bank’s mandate [my underlining]. The mandate was given by the Bank’s Chief Financial Officer, Mr Adebisi, with the authority of the members of (a) the Bank’s board and other senior management and (b) the Bank’s control function, in accordance with discussions that took place between April or May 2007 and 2009.”

Once the new Unlawful Share Purchase Claim was made, the Amended Defence and Counterclaim (settled by fresh leading Counsel – not Mr Chaisty) added the following words to paragraph 37 (I underline what was added in red):

“All (alternatively, a substantial part) of the Share Transactions were for shares in the Bank itself which (in the case of shares in the Bank) were purchased on behalf of the Bank’s customers.”

Paragraph 41 was unchanged.

21. The witness statement of course remained unchanged:

“113. ... I was aware that the Bank had been purchasing shares since April or May 2007 [my underlining] and I also knew that Tropics Securities (along with ISL and Summit) were brokers frequently used by the Bank for that purpose. In those circumstances it was not surprising to me that Tropics Securities was one of the brokers through which the Bank, on instructions from Mr Adebisi, should choose to purchase shares.

...

127. As things have turned out these share purchases were made at a substantial loss, as can be seen from the memo dated 25 November ... from Mr Fabunmi [I shall refer to this further

in paragraph 55 below] ... That loss is owned by the Bank [my underlining].”

22. Mr Browne-Wilkinson points out that the case is not there made that the shares were purchased on behalf of the customers, or that the loss was that of the customers.

A Review of the Documents

23. The first document relevant to the issue, as Mr Chaisty points out, antedates the time when the Claimant asserts that the Defendant launched or implemented his Strategy for IB to purchase its own shares. An internal memo from SDS to “*Divisional Head, Consumer Banking and Liability Generation*” dated 15 May 2004 refers to the “*static share price of our Bank at the Capital Market*”. It recommends “*before we resume direct intervention ... we need to manage our tradeable volumes in the market better, as this is another area through which the price of our Bank remains depressed. This can be achieved through moral suasion and also discrete buy-back/buy-out agreements with such volume holders especially those in-House*”. The Defendant points out the open nature of this discussion, but he states that he did not receive the memo. His case as to what “*direct intervention*” means is that it is matching, a bringing of buyers and sellers together.
24. One of the co-authors of that SDS paper of 15 May 2004, Ola Williams, wrote a “*Status Review of Asset Portfolio*” dated 1 September 2004, addressed to “*Executive Management*”. It is expressly referred to in the Minutes of a meeting in the Defendant’s office at 5.30pm on the same day, attended by (among others) the Defendant, Ola Williams (who also took the Minutes at the meeting), Mr Adebisi, Mr Olayinka, Mr Olugbemi (“*GE (Investment Banking Group)*”) and Mr Toyin Ehinlaiye, who was apparently a lawyer. I am satisfied that Mr Williams’ Status Review was before the meeting and discussed by it, and was (as will be further seen) assimilated by the Defendant, and that it attached (and there was discussed) the “*Portfolio Remedial Strategies*” (PRS) referred to in Mr Williams’ Status Review. The PRS document sets out IB’s shareholding in First Bank, in National Bank and (as is quite clear, for reasons I shall indicate) in itself. There is discussion of the problems in relation to the holdings in First Bank and National Bank. With regard to its holdings in itself, the PRS document, after setting out a negative return on investment to date of N48,726,967.52 (because a quantity of 31,220,620 shares had been purchased for N204,830,067.52 and was now only worth N156,103,100), continued:

“[The position] of our holdings in IB plc is very delicate and will require a broad range marketing strategy to recover [the price] of the stock and enable profitable management of the equity holding. [Marketing] strategy will be multi-pronged and multi-faceted. It will involve current shareholders, staff of the [Bank and] high net worth individuals outside the Bank. The current fortunes of the stock are hinged on the large [volumes] of the stock available in the open market and a lack of corresponding demand to buy up that volume. [The] challenge is to find new demand to take to the market to pick up the volumes that exist ... It is desirable that we emphasise to our current shareholders the desirability ... of ... increasing their holdings of IB plc [stock] in the run up to any proposed action

on the public offer front ... The department is also looking for high net individuals outside the Bank to pick up some of the shares and we [currently] are trying to access some of them for marketing. The main constraint on this strategy is the current [price] of the stock which ensures that to offload will lead to a loss position for us. This can be countered by successfully getting current shareholders and customers to demand the shares of the Bank on the open market. [Demand] will help give the price a fillip that will make it attractive to outside investors.”

25. The Minutes of the meeting record as follows:

“The Meeting, which was scheduled at the instance of ... Mr Adebisi, commenced at about 5.30pm under the chairmanship of [the Defendant] VC/CE. The focus of proceedings was to apprise top management with goings-on in the Nigerian Capital market and review the effect of the emerging scenarios on the SDS stock portfolio, which was reporting a diminution in value of N193.5m, having declined by 24.45%.

DECISIONS

During the presentation of the portfolio position by a situation report prepared by Ola Williams, the [Defendant] expressing his displeasure with the unfolding position opened discussions on the remedial strategies and explanations thereon with the general sitting, taking comments, opinions and responsibilities. It was therefore agreed as follows:

...

4. The department should prepare another paper on the asset portfolio stating the extent to which the existing position may be further held and what the carrying cost would amount to.

5. The volume of Intercontinental stock held due to market intervention activities of the department should be consolidated for eventual profitable disposal, whilst further high volume intervention should be discontinued until further notice or review.

6. The remedial strategies on the asset portfolios are approved for implementation.”

26. The Defendant sent an inter-office memorandum the next day to Mr Olugbemi, who had also been present, according to the Minutes, at the meeting of September 1 in the Defendant's office. He wrote:

"I was shocked yesterday upon your presentation, when you revealed that the department has lost about N250m in the last 1 month in the portfolio. This is about 25% of the portfolio.

I will like to know:

- *Did all these losses take place in one day?*
- *What mechanism did you put in place to refer this to your superior?*
- *What did you do to stop this bleeding before it got to this level?"*

27. Mr Olugbemi's reply, apart from referring to Mr Williams' remedial strategies (clearly his PRS document), refers to the fact that the price of IB was "*N6.45 ... current prices are ... Intercontinental N5.00.*"
28. In cross-examination, the Defendant queried how the N250m had been arrived at, and whether this had any relevance to shares in IB. However:
- i) Although there is no express heading of "IB plc" above the figures in the PRS document, below which is the discussion relating to "*the position of our holdings in IB plc is very delicate*", those figures, which I have interpreted as relating to the shares in IB plc, and show a negative ROI, did indeed refer to the loss in IB shares. This is because, as can be seen from Mr Olugbemi's memo of 2 September responding to the Defendant's shocked memo, the "*current price*" of IB plc shares resulting in the loss was indeed N5.00, and the N250m loss to which the Defendant was referring clearly consists of the total of the N48.7m loss on IB shares and the 193m loss in the consolidated portfolio (with which, as was stated in paragraph 5 of the Minutes, the IB stock had not yet been consolidated).
 - ii) The position therefore must have been as at September 2004 both that the Defendant knew that IB had a holding in its own shares and had made a loss in it, and that there was a need to consider how to increase the price of the shares so as to avoid "*offloading*" them and a "*loss position for us*".
29. Mr Chaisty points out that this is an open discussion, in which not only was a lawyer participating, but also the Defendant, who had written a letter dated 23 September 2003 to his fellow director Mr Enuha in which he said, in rejecting a proposal by Mr Enuha, "*let me mention that it is a criminal offence for any company to buy back its own shares without the approval of the Securities & Exchange Commission ... I will look into all the issues, but please be reassured that whatever commitment I make to you personally, I will stand by it, provided we are both breaking no laws and Intercontinental Bank will not lose any money*".
30. In cross-examination the Defendant's explanation was that the shares held were, according to him, "*shares that the credit and marketing department sent to SDS to sell for them*", as a result of unpaid loans by customers, but were "*not shares bought by the Bank*", and that the marketing proposals would involve finding people (as appears

in part in the documents) to purchase shares in IB by, as the Defendant said in re-examination, *“matching sellers with buyers within SDS as a service to our shareholders and major customers ... and secondly to get our stockbrokers in SDS to interact with other stockbrokers on the floor to give them the good news of what’s happening in the Bank, so that they can advise their own clients to buy our stock.”*

31. I now turn to four internal memoranda, all related to the share price, and all during the period prior to the first recorded purchase of shares into the box in August 2007: Mr Fabunmi, in his memo of 4 November 2009 to which I shall return below, confirmed that *“the purchases of the bank’s shares in box commenced in 2007.”*

i) The first is a memo from SDS, signed by Mrs Akingbade and a Mr Adeniyi, to Mr Adebisi, Subject *“Share price”* dated 20 December 2006. It stated that *“the recent public offer of the Bank’s share which was at the price of N13.50 imposed a moral obligation on the Bank to ensure that the market price does not fall below this price. This has led to the Bank’s interest resulting in a steady price which ranged between N13.70 and N14 within the last two weeks ... Recent happenings on the floor of the Stock Exchange have revealed that ... houses have large quantities of our Bank’s Stock for sale ... Consequently, the consistent supply of the Bank’s Stock by these houses have resulted into depression of the price. The Bank’s resolve has however ensured recovery of this price”*. There is attached a Schedule showing trade dates in December 2006 for IB shares, which is headed up *“FCD Special Transactions”*.

ii) Second is a memo dated 6 March 2007 from Mrs Akingbade at SDS to *“Executive Management”*, Subject *“Maintaining a Competitive Share Price for our Bank”*. This includes the following:

“Following our recent performances and various milestone achievements, there are needs (sic) to project an appreciable and viable Bank’s share price now and in the future has become very imperative ... Though the stock price is moving at a slower pace than expected, the following recommendations would help achieve a more buoyant stock price ... A deliberate reduction of stocks available to speculators can be achieved via special loans which would be made available to Staff and Directors that would be used to mop up stocks available to speculators and thereby strengthen demand against supply ... the Bank could also have a first option of purchase from such staff.”

iii) A memo with the same heading *“Maintaining a Competitive share price for our Bank”* was sent by Mrs Akingbade at SDS to Mr Adebisi on 15 March 2007:

“The minimum target price we would achieve with these initiatives would be N35.00. We expect that the special share loan scheme which would cut across grades SEA to GCE [the Defendant] and would have a minimum holding period of one year would assist in achieving this initiative. It is also believed that if shares totalling a minimum of 500

million in the first phase are mopped up, it would help achieve the target price. The newly redesigned organogram ... has captured the need for an Investors Management unit. This unit would be largely responsible for providing information required to shareholders both foreign and local and also identifying large investors that might want to sell their shares ... Another responsibility of this unit would be to market the Bank's stock to large institutional investors."

- iv) Finally, a memo from Mrs Akingbade, Head of SDS, to Executive Management, dated 3 July 2007, Subject "*Achieving a Superior Price Regime for the Intercontinental Bank Stock*". The recommendations included:

"The Bank must deliberately reduce the stocks available to speculators; it is recommended that a minimum shareholding of 70% be maintained between/amongst directors and staff shareholders. Deliberate efforts should also be made to ensure we increase percentages held by either Nigerians in diaspora, top politicians and institutional investors to about 20%, whilst speculators should only be allowed to hold a maximum of 10%. This must be consciously worked on with definite targets set for achievement."

32. The Defendant states that he did not see any of these memos. He says that if he had received them he would have "*admonished them that they should not have a preoccupation with maintaining the Bank's share price. It's stability that matters, no question whether it is high or low. It's a return on investment, so it's money we make in the Bank and the dividend we can pay that matters, not the price of the shares. I will have told them that shouldn't be a preoccupation at all ... I want to believe that Mr Adebisi, as a well-versed finance man, must know this as well, that preoccupation with share price is like chasing shadows*" (Day 12 p120).

33. There is a draft agreement, which the Defendant accepts that he himself drafted, between the Defendant (described as the "*Purchaser/Owner*") and Alhaji Aliko Dangote, described as "*the financier*", a well-known and very wealthy Nigerian businessman. The first draft is dated 19 July 2007 and the second draft is dated 16 August 2007. It recites that:

"(a) The purchaser/owner has requested for financial assistance from the Financier to enable him to purchase 435,014,119 units of Intercontinental Bank plc ... shares.

(b) The Financier has agreed to provide the said assistance under the terms and conditions hereinafter appearing."

34. The agreement provides that in consideration of the provision of N9.3bn by the Financier to enable the Defendant to purchase that quantity of units of IB shares, the purchaser would deposit with Mr Dangote the shares so purchased, on the basis that, on repayment of the sum of N9.3bn provided by Mr Dangote, the Defendant would have the full beneficial ownership of the said stock, but, in the event of non-

repayment on or before 15 February 2008 (or at any other time after this date, as agreed by the parties), Mr Dangote was entitled to sell the balance of any stock to the extent of the unpaid loan. The Defendant asserted in evidence that the agreement was never finalised and that the date of August 2007 is a typographical error. But it is difficult to see how the latter can be the case, given the default date also included in the agreement of 15 February 2008, and, in any event, the Claimant points to the IB plc Shares Summary, kept by Tropics ("the Tropics IB Schedule") and disclosed during these proceedings from Tropics offices, showing that exact number of shares (435,014,119) recorded as purchased on 20 August 2007 (as to more than half in the Defendant's name and, as to the balance, in names which are accepted to have been used by the Defendant), and recorded as being "*with Dangote*". If that be right, as the Claimant says it is, then the Defendant was, simultaneously with a period during which there was a strategy to increase IB's share price, engaged in a purchase with borrowed funds of a substantial quantity of IB shares.

35. Purchases of IB shares "*into the box*", as appears from the agreed Schedules referred to in paragraph 9 above, were very regular, through all three brokers, from August 2007, and, by 29 April 2008, had amounted to 2,996,256,456 shares for an outlay of N110,414,507,752. There are documents which the Claimant asserts show the Defendant's involvement /knowledge at this time:
- i) A memo from SDS dated 26 October 2007 addressed to Mr Adebisi, subject "*Payment of shares*" asking for approval of the issuance of a cheque payable to Tropics Securities Ltd for the purchase of shares in the sum of N5,647,360,800, being payment for 200 million shares at N27.96 per unit, was passed on by Mr Adebisi to the Defendant for approval, and signed as approved by the Defendant. A similar memo of 2 November 2007 headed "*Payment for Purchase of Intercontinental Bank plc shares*" requesting payment to Summit for the purchase of IB shares, being 116,300,000 units, in a total sum of N3,277,161,381.82, appears to have been approved by Mr Adebisi, without counter-approval by the Defendant.
 - ii) Purchase of 133 million units from identified shareholders was approved by the Defendant on 14 December 2007 and, pursuant to an email instruction dated 24 December 2007 by Mr Toyin Ehinlaiye (referred to in paragraph 24 above), the shares were transferred to ICML.
 - iii) By letter of 13 December 2007, a director of the Defendant, Sheriff Yussuf, said that he "*wished to sell*" three million IB shares and asked Mr Ehinlaiye to "*kindly arrange sale of the shares at current market price*". Mr Ehinlaiye annotated the letter to ask the Defendant "*kindly approve the purchase of these shares at a price of N35.00 per share*" on 14 December 2007, and the Defendant signed off such approval. The Defendant gave evidence that, as far as he was concerned, what he was approving was Sheriff Yussuf selling his shares, because, being an executive director, he could not sell his shares without the Defendant's knowledge, and not IB's *purchasing* them – notwithstanding the wording.
 - iv) Tropics Securities, by letter signed by Mr Dada and addressed to the Group Chief Executive, sought payment from him on 17 January 2008 for purchases of 1,300,000 shares in IB for a total sum of N54,011,471.80, describing the

'client' as ICML. The Defendant says that he routinely did not receive all letters addressed to the Group Chief Executive.

36. The Claimant's case is that this period of substantial purchase of shares with, as the Claimant asserts, the purpose of 'ramping' the share price, started to tail off after the publication of a JP Morgan Report of 12 May 2008. From that period, although there were some more purchases of shares into the box (the total rising from 2,996,256,456 units at a price of N110,414,507,752 as at 24 April 2008 (since August 2007) to a total of 3,748,070,511 at a price of N140,969,395,021 as at 27 August 2008), the Claimant asserts that steps now commenced to be taken to transfer shares out of the box, into the names of Category 1, Category 2 and Category 3 crossees (see paragraph 13 above). The JP Morgan Report, addressing Nigerian banks, was critical of three banks in particular: IB, Union Bank of Nigeria plc and First Bank. So far as IB is concerned, the Report showed a 75% share price increase over the previous year and was "*concerned that Intercontinental's rapid pace of growth has run ahead of its risk and credit control capability*". The Defendant gave evidence that he did not remember seeing that Report, but that would, quite apart from what I have set out above, seem unlikely for a chief executive of a bank the subject matter of such a report.
37. Documents in handwriting, which were recently found in the office which used to be occupied by Mr Fabunmi at the Bank, have been disclosed by the Claimant. Mr Fabunmi originally denied that it was his handwriting, but the Claimant obtained and served a handwriting expert's report from Mr Radley, which opined that there was strong evidence to support the proposition that the handwriting was that of Mr Fabunmi; and Mr Fabunmi subsequently in evidence accepted that that was the case, although he was unable to explain the meaning of the document. The Claimant contends that the documents clearly relate to proposals being discussed as to how the shares in the box would be crossed or transferred out. In a Schedule headed "*Reconciliation of positions of stock balances*", with Mr Fabunmi's handwriting on it, there were said to be "*available*" 2,990,000,000 units, which appears to be plainly the number of shares in the box as at 24 April 2008 (see paragraph 36 above), rounded down to the nearest million. There are then said to be "*commitments*" by various entities in respect of the shares, mentioning names, with a "*net available*" of the remaining units. The separate handwritten document would appear to be Mr Fabunmi's notes as to possible targets, with references such as "*GCE to speak with him*". The Defendant said he has no recollection of these discussions or proposals. Mr Fabunmi emphasises that he did not become the Defendant's Executive Assistant until July 2008, but these discussions, in which he was plainly involved, must have taken place in late April or early May 2008, and the Defendant in his evidence (Day 13) said that Mr Fabunmi started working for him as Executive Assistant in either April or May.
38. In any event, there followed a series of documents relating to the crossing of the shares in the box.
- i) Category 1. There are loan applications from a number of customers, which the Claimant accepts to be genuine customers. All of them signed applications for loans to enable them to purchase shares, variously described either as shares in "*blue chip companies*" – although subsequent documentation in relation to those customers also referred to the purchase of shares in IB (and it

is common ground that IB would in any event be included within the rubric of “blue chip companies”) – or simply to “enable the customer to purchase shares of IB”, and in almost every case it was further stated “in the secondary market”, which would mean not on the Stock Exchange. All these loan applications (save that of M & J) were approved, after consideration by lesser executives, by the Defendant. They are dated between 14 April and 20 May 2008. As stated in paragraph 14 above, there is no sign that the various loans were ever drawn down or (save in the case of M & J) in any part repaid, and (in the case of all save M & J) they were subsequently cancelled and the transactions unwound or reversed, again with the express authorisation of, first, lesser executives, and then of the Defendant, in May and June of 2009.

- ii) Category 2: I have already referred in paragraph 13 above to the series of letters from the various directors of IB, all addressed to the Group Chief Executive, referring to earlier discussions with him, applying for loans of N8 billion to their company, all dated 14 or 16 May 2008. These too were later unwound.
 - iii) As to Category 3, the Claimant accepts that there is no sign of the Defendant being involved in crossings to these companies. They were all companies who had pre-existing non-performing loans from IB. There is no sign that any of them ever knew that shares had been crossed to them: a March 1 2010 Bank memo described such a company as “not being privy to it”. The Claimant asserts that the companies were chosen as recipients both in order to be a convenient depository for shares in the box and also because it could thus appear to be the case that there was thus some further security in respect of those otherwise unsatisfactory loans. These crossings too were later unwound.
39. According to a Board minute of 28 July 2008, under the heading “*Intercontinental Bank plc shares*”, it was recorded that “*the Board noted the rapid drop in the price of Intercontinental Bank plc shares and urged directors to use the opportunity to increase their shareholdings in the Bank*”. By an email of that date from Mrs Akingbade to Mr Adebisi, copied to the Defendant, she recorded “*Kindly confirm to treasury that we have been instructed to buy [IB] shares*”, and, after a response from Mr Adebisi, also copied to the Defendant, she stated:

“I agree that this actually relates to Bank’s book and that, though SDS does the dealing the settlement would hit ISL’s position ... Treasury is requesting for the confirmation to enable them to make payments as and when due, to cover up the transactions relating to the Bank’s books.”

The quantity according to Mrs Akingbade’s email that “*we bought*” was 14,894,800 units (out of the total market traded quantity on that date of 22,774,793 units). On the face of it, it is a substantial purchase in the market by the Bank of its own shares. The Defendant in evidence said that he could not recall seeing the email exchange into which he was copied: he made it clear that he was not familiar with emails, and that a lot of emails were copied in to him, but his secretary or his Executive Assistant would only draw his attention to the important ones: he points out that there is no comment of his own recorded.

40. On 22 October 2008 Mr Fabunmi, as Executive Assistant to GCE, sent to the Group Chief Executive through FD (Investments Banking and Subsidiaries) which is Mr Adebisi, the October Memo, Subject “*Issues and facts on the purchase of Intercontinental Bank shares by SDS*”. It reads as follows:

“Following the discussion held with you Sir over the phone concerning the issue of shares purchased by SDS, it was apparent that there is the need to confirm the authentic number of shares purchased, at what price and the timing of the purchase. A reconciliation of the GL account and the records of the SDS were done. The outcome of this is summarized below stating the issues and the facts:

Issue 1: What is the actual number of shares already bought by SDS before the decision to sell to select customers?

The decision to commence sales to select customers was taken towards the end of April 2008 as the earliest approval of the GCE on facilities for the sales was on 30 April 2008. As at this date, the number of shares already purchased by SDS was 2.996billion units.

Issue 2: What is the average cost of the shares purchased before the sales decision was taken?

The average cost of the shares purchased when the sales commenced was stated as N35.00. This was not correct. The average cost was N37.28, made up of actual average cost of N36.85 and crossing charges of N0.43.

Issue 3: What number of shares were bought after sales decision up to AGM of the bank?

Additional shares bought after the sales decision up to AGM of the bank on 30 June 2008 was 617.7 million units.

Issue 4: What is the average cost of the shares bought after sales decision up to AGM of the bank?

The average cost of the shares bought after sales decision up to AGM of the bank was N43.15.

Issue 5: What number of shares were bought after AGM of the bank?

Additional shares bought after the AGM of the bank was 134.1 million units.

Issue 6: What is the average cost of the shares bought after AGM of the bank?

The average cost of the shares bought after the AGM of the bank was N29.11.

Issue 7: Why were some shares bought at a price as high as N45?

A decision on the need to review the continuous maintenance of the share price at the N45 range was not effectively taken until after the J.P. Morgan report in June 2008. The fact is that the price was maintained through for the purpose of the AGM. Effectively, the share price was in the N45 range since early March 2008 and was maintained up till late June 2008. This resulted in a high average cost of the shares and the portion bought at that price range.”

41. It is clearly of considerable significance. Although it was addressed to the Defendant, the Defendant asserts that he did not see it, perhaps, he says, because he was out of the country at the time. However, he does accept that he saw it, and discussed it with Mr Adebisi, when it was sent to him by Mr Adebisi on 12 November 2008, 21 days later, as an annexure to a memo dated 12 November Memo (“the November Memo”). There are obviously important aspects to the October Memo for the purposes of the issues I have to decide:
- i) It refers to “*discussions held with you Sir concerning the issue of shares purchased by SDS*”. Neither Mr Fabunmi nor the Defendant can remember such a conversation, and it is suggested that it may have been with Mr Adebisi, to whom the memo was also addressed. This would seem to be supported by the reference to “*GCE*”, being the Defendant, within Issue 1.
 - ii) As to Issue 1, this has significance in two respects: first of all it records (by reference to the SDS Schedule (referred to in paragraph 9 above), which was attached, the number of shares “*already purchased by SDS*” by the end of April 2008, which ties up with Mr Fabunmi’s handwritten note referred to in paragraph 37 above. Secondly, it refers to “*the decision to commence sales to select customers*”, for which the Defendant is recorded as having given approval, at the end of April 2008: this would appear clearly to be a reference to the crossing of the shares in the box commencing at that time, to Category 1 and Category 2 transferees.
 - iii) Issue 3 shows that further shares continued to be purchased after the “*sales decision*” i.e. the decision to start crossing the shares out of the box, namely a further 617.7 million units up to the AGM, and, as can be seen from Issue 5, a further 134.1 million shares of the Bank after the AGM.
 - iv) It is quite clear that, according to the October Memo, the decision to review the Strategy to increase/maintain the share price to/at N45 (as compared with the N23.56 which was the price when the first shares were bought in to the box in August 2007), was “*not effectively taken until after the JP Morgan report*”.
42. In his eighth witness statement the Defendant accepted that he discussed this memo with Mr Adebisi, after he received the November Memo, “*fairly briefly*”. With regard

to Issue 1, he says that Mr Adebisi informed him that shares in the Bank had been 'cancelled', so that it was necessary for the Bank to try to resell such shares to third parties: and that with regard to Issues 3 and 5 these were references, as he understood them, to shares purchased for third parties. In evidence, however, he denied discussing the October Memo with Mr Adebisi, until he was reminded of his witness statement. He said that although Mr Adebisi might have been bringing things out of the memo in his discussions, he did not go into it, because "*I didn't have time to go into all the details of what they bring to me and that's why they always bring me executive summary*". When questioned about the October Memo and the "*Schedule of IB plc shares purchased*", he said that it related to shares purchased on behalf of customers. He said "*If we ask anybody in the Bank what does SDS do, they would say SDS buys and sells shares. So if Fabunmi is writing about SDS at any time, he will say SDS purchases shares, but why does SDS purchase shares, Fabunmi will not know, or will not explain.*" When Mr Fabunmi gave evidence later, he said that he simply put down the figures of which he was informed, and did not know whether the shares were purchased for customers (see further at paragraphs 53 and 73 below).

43. The November Memo from Mr Adebisi to the Defendant, dated 12 November 2008, Subject "*Share trading*", which attached the October Memo and the Schedule of IB plc shares purchased, being the shares purchased into the box between August 2007 and August 2008 totalling N140,969,395,021, reads as follows:

"Please find attached a report addressing issues earlier raised on the activities of SDS.

Further to the attached, the following were my observations:

At the inception of the strategy to purchase shares, we had two objectives namely:

(a) Push up the price with a target of about N60 per share by December 2008 and N80 per share by April 2009.

(b) Remove shares out of the hand of speculators and increase shareholding at the board level to about 50%-60% from the 30% estimated during the Ghana Strategy Meeting.

All these plans were not realised due to our inability to source a long term cheap source of funds offshore and this led to the search for alternative class of buyers who will not mind the loan at the market rate.

The total number of shares purchased as per the attach records were as follows [in units]:

From the floor 3.43B

Crossing from Bank borrower 0.31B

Total 3.74B

We also have additional 122.8m units from bank borrowers already paid for but awaiting verification before eventual crossing to the bank.

From all indications, the total shares purchased after the AGM was only 134 million units over the period 8th July to August 2008. Total shares purchased to date are 3.74B units while 1.4B units were sold, and 122.8m units paid and awaiting crossing to the bank, leaving a total of 2.47B units at an average price of N37.5. It appears that most of the shares were already in our books by the time of the AGM."

44. The Defendant admits that he received and discussed with Mr Adebisi the contents of this Memo and, to the extent set out above, he admits briefly discussing the October Memo referred to at the outset and attached. The significance appears to be as follows:
- i) He refers to "*the strategy to purchase shares*" and to "*we*" having two objectives.
 - ii) Those objectives were to push up the share price and remove the IB shares out of the hands of speculators. In an answer upon which the Claimant places reliance (Day 13 p50) the Defendant responded, when asked about the Strategy, that "*there was a strategy to purchase shares and sell them to high net worth individuals*".
 - iii) The summary of the position given by Mr Adebisi to the Defendant records the "*total number of shares purchased as per the attached records*", with a reference to an "*additional*" number of units from bank borrowers already paid for, but awaiting eventual crossing to the Bank. The Defendant asserted (Day 18): "*I want to believe these are the shares they bought on behalf of customers that he is giving an account of ... he is trying to tell me the sources of the shares they bought for customers, for which they have granted loans.*"
 - iv) The Defendant denies (Day 12 p126) that he ever took a decision or gave a directive to expand or continue the Strategy of market intervention by buying the Bank's shares, as recorded by Mr Adebisi in the November Memo.
 - v) In relation to Mr Adebisi's clear words at the end of the Memo as to the total shares purchased, and some *awaiting crossing to the bank*, he said (Day 18 p120) "*I want to believe he is telling us that the shares [were] bought before some of the customers started returning their shares, and we were then selling to other people ... I think that's what he's trying to tell me.*"
45. The further memo upon which the Claimant relies is dated 18 November 2008, ("the Insider Trading Memo") and there is no challenge to the fact that this memo was received by the Defendant. It was sent by Mr Adewunmi of the Bank Inspection Group to the Defendant (Group Chief Executive), Subject: "*Review of FCD (Special) Transactions under SDS*". It is necessary to set out much of this memo, which I do below, since I there include, and add underlining to (inter alia), most of the references in it to the Box (of which there were no fewer than 18). It is a report by the Inspection

Group of a review, which it seems the Defendant required them to carry out (although in his evidence the Defendant suggested it may have been commissioned by Mr Adebiyi), of which members of staff had sold their shares “into the box”; and it appears to relate plainly to a concern that staff members were taking advantage of their knowledge of the box to carry out insider trading, as the Defendant accepted in evidence (Day 13, p65). What he then said however, in relation to the Introduction, which I set out below, is that “*this is where the investigators got confused: the Bank had no box.*”

“Introduction

A. We have reviewed the ICML/SDS transactions under SDS towards identifying the counterparties (especially staff) who sold their intercontinental bank shares were bought into the Bank’s box [sic] during the period SDS bought additional purchases of 883,645,081. Below are the details of our work done, findings, conclusion and recommendations.

Work done

- *We reviewed the purchases on the SDS schedules ...*
- ...
- *We also reviewed Intercontinental Bank Box’ shares transactions with Intercontinental Securities, Summit Finance and Tropics Securities, under the control of SDS.*

Findings

1. *The Stock Positions as Per SDS Schedule submitted to Executive Management are as follows [this is a reference to the Schedule of IB plc shares purchased, attached to the October and November Memos.]*

...

The schedule of stock position totalling 2,908,789,846 units reported to be purchased between 31/08/2007 to 18/04/2008 was reported to Executive Management, out of which 1,219,166,666 units were crossed to 11 different firms between 09 June and 24 July 2008 in line with Executive Management directive. Thus, the balance of 1,689,623,180 units outstanding is expected to be the balance in the bank’s box.

Meanwhile, in contrast to the expectation above, SDS continued to purchase shares into the box and additional units of 883,645,081 units of IBplc shares were purchased between 16 April and 24 September 2008; bringing the net total shares in the banks box to 2,573,268,261 units. The

question here is was there approval/authorisation for further purchases of IB plc shares into the bank's box.

...

In response to the memo issued to Mrs Akingbade (Head SDS) on the rationale for additional purchases after Management has directed a wind down and crossing of stocks in the box, she stated that the additional purchases were 272,518,573 units which were done after the crossing and not 883,645,081 as claimed above. According to her, a total of 3.5 billion units had been purchased when 2.9 billion units was forwarded to Management on the notion that only 2.9 billion was meant for crossing by Management.

On the approval and authorization for the additional purchase of 272,518,573 units, she claimed that the purchases were at instance of the ED, Investment Banking & Subsidiaries and occasionally the GCE [the Defendant] and they were all verbal instructions.

...

A review of the list of staff ... revealed some staff who sold above 1 million units each into the Bank Box ... However, out of these staff, two staff ... [Mrs Akingbade and another] ... were specifically highlighted because of their direct involvement in the purchasing of IB plc shares. It is our opinion that the duo could have capitalized on their position as insider knowledge with Management strategy to buy and sell their holding into the bank box. These staff should have, at least, dissociated themselves from direct buying and selling of their personal IB plc shares into the bank's box. ...

...

Constraints

There are challenges of getting the names of clients of other stockbroking firms who sold IB plc shares which SDS purchased.

...

CONCLUSION

The main issue here is why SDS continued further purchases of IB Plc shares and the objective that the continued purchases was meant to achieve in the face of the bearish change in the market at that time.

...

On the part of the staff whose stock were bought into the box, it is our opinion that such staff who gave instruction to sell might not know that the holding will be bought to the Bank's box. There is the likelihood that some staff have the

premonition of management's intention and capitalize to sell when the price was high, but there are some who could have sold without prior information and without the knowledge of the bank purchases into the box. It may be difficult to differentiate between the sale with objective for SDS to buy into the Bank's box and sale done at arm length. In the same vein, the duo ... who were entrusted with information and expected to manage the bank stocks should have dissociated themselves from selling into the box. They should explain the motive behind the sales of their personal shares into the box ...

RECOMMENDATIONS

The two officers above ... should be invited to Disciplinary Committee to explain their roles in the issues mentioned above, especially as it pertains to direct purchases from staff (including themselves) into the Bank's box.

...”

46. The 18 references in the memo to the Bank's box makes the Defendant's comment – “*The bank had no box*” – all the more impossible to accept (particularly in the light of the letter from the then Chairman of IB Dr Obieri to Mr Adebisi dated 3 March 2009 in which he too refers to “*shares bought into the Box*”). But the memo is also clearly significant in its reference to SDS purchasing the shares into the box (and crossing some of them to others between June and July 2008), and to Management directing a wind-down and crossing of stocks in the box, and the Defendant authorising some further purchases after that date. The Defendant's comment again is that the Bank was buying and selling quite a lot of shares on behalf of its customers. It is extraordinarily difficult to see why the Defendant did not – and he does not say that he did – react at the time by taking issue with the content of the report when he saw it, if it was not familiar to him. It is difficult to reach any other conclusion than that the investigation was, and was intended to be, into which employees were taking advantage of the fact that the Bank had been buying, on a substantial basis, its own shares and transferring them into the box and crossing some of them out of the box, and that the existence of the shares in the box, as part of Management strategy, was taken as a given.
47. By letter dated 30 January 2009, Summit wrote to say that, following a reconciliation of IB shares transactions handled for the Bank, it had discovered a shortfall of N3,472,161.48 unpaid by the Bank, and a schedule of shares purchased, and not previously advised, was attached. SDS carried out an investigation and a reconciliation exercise, and concluded that the sums were due. A further enquiry was ordered, and, by a memo to Mr Adebisi dated 21 May 2009, the Inspection Group concluded that the sums were due in respect of shares purchased by Summit on the Bank's behalf. After various other executives had approved the payments, the Defendant himself authorised it on 25 May 2009.
48. As discussed in paragraph 14 above, in May and June 2009 the crossing of shares in the box to the Category 1 companies was reversed. It was in each case presented that the customers were no longer able to meet the loan and that the shares had

substantially lost value since the original application: and, after approval by other executives, the Defendant gave his approval. On two occasions, the Alsmith reversal on 2 June 2009 and the reversals of the Skyview and Skyfon “*Special Share Loans*” on 9 July 2009, the Defendant made express reference to Mr Fabunmi in doing so.

49. This, as the Defendant accepted in evidence, was a somewhat unusual way of dealing with a defaulting loan, namely cancelling or reversing the original transaction by which they purchased the shares for which purpose they had taken the loan, rather than treating the loan as in default. But the significant factor is that the party which would normally cancel the transaction would be the original vendor of shares, who would thus take them back. There is no sign of anyone other than the Bank being involved in the reversal, and the taking back of the shares simply put them back in the box.
50. The intervention by CBN and the removal of the Defendant took place in August 2009, and the Defendant was replaced as Chief Executive by Mr Alabi. There is a handwritten memo by Mr Alabi of 2 November 2009 addressed to Financial and Internal Control, enquiring about dividends in relation to the Bank’s own shares, which it appeared to have purchased. Mr Fabunmi responded, by memo dated 4 November 2009, in his capacity as Financial Controller, which he had become in November 2008:

“Issue 1: names under which the bank’s shares in box are held.

As detailed in the attached Appendix 1 [now totalling 2.9m shares] the bank’s shares are held under the name of [ICML] and ICML (SDS)] under the specified stockbrokers.

Issue 2: Dividends ...

The purchases of the bank’s shares in box commenced in 2007, hence the dividend that has been paid since then are the interim and final dividends for the year ended 28 February 2008 ... These were received by the Bank ...”

51. Mr Fabunmi not only takes no issue with the shares in the box belonging to the Bank, but he describes them as set out above. He is then the co-author, together with Mr Olonade (who was to succeed him as Head of Financial Control) of an “*investment report for presentation to Executive Management*” dated 5 November 2009. There was an earlier draft of this, on which there are a number of handwritten comments by Mr Alabi, but Mr Fabunmi accepts that he was party to the finished version. It is headed “*Report on Equity investments by the bank*” and it reads as follows:

“The bank has significant investment in own shares as contained in the attached Appendix 1. The diminution in the value of the shares when marked to market as at 30th October, 2009 amounted to N164.71 billion. The Bank purchased these shares with her own fund directly through selected Stock Brokers listed in the same appendix. The shares are still owned by the Bank and are with these Stock Brokers, though in many different names. Most of the approvals for payment to Stock

Brokers came from the Divisional Head, Finance and Subsidiaries (who was an Executive Director) or whosoever acted in that capacity during his absence. We have commenced reconciliation with the various Stockbrokers used for the purchases but reconciliation with Tropics Securities Ltd is still outstanding as to broker is still under seal.”

52. The reference in the Report to reconciliation with Tropics arises out of the payment, which Mr Fabunmi knew of (and had been responsible for), of more than N18 billion, which had been paid out by the Bank in May and June 2009 (now the subject of the Tropics Payments Claim), and which was then beginning to be investigated. Mr Fabunmi had added that N18 billion to the N161 billion, which had been the result of reconciliation of the shares in the box, and which, subject to the matters raised and discussed in paragraphs 91 and 92 below, is not the subject of material dispute. As will appear in paragraph 103 below, Mr Fabunmi had added the N18 billion, on the basis of that being the cost of additional shares purchased into the box. His attached “*Schedule of Shares in Box*” consequently records N179 billion.
53. Leaving aside the consequent difference in the total amount of the valuation of the shares in the box, there is clearly no doubt in the Report that the shares in the box belong to the Bank, because “*the Bank has significant investment in own shares*” to that extent, and “*the Bank purchased these shares with her own fund ... The shares are still owned by the Bank*”. Mr Fabunmi, a chartered accountant, in cross-examination gave the explanation that he had simply not known on whose behalf the shares were purchased. At day 21 page 152 he said:

“The use of that word “in own shares” is referring to Intercontinental shares. Own shares is clearly describing that these shares we are talking about is shares of Intercontinental bank. Those of us in financial control are not involved in anything that relate to purchase or non-purchase of shares. We don’t know about it. So we could not have known whether something was being purchased for a customer or for a non-customer. We do not do that. [The reference to “the shares are still owned by the bank”] means ... that ... the bank paid. That evidence we have in financial control. What that means is that we took the step to find out from the stockbrokers: are you still having the shares with you; is it being held for the bank; and they confirmed to us yes.”

54. Mr Fabunmi himself (and there is no challenge to his involvement in and authorship of this memo) wrote a memo dated 25 November 2009 to Mr Jimoh, in response to Mr Jimoh’s query of 24 November that two new general ledger accounts had been opened on 31 August 2009 in the books of the Bank, and that the total sum of N179 billion, which had previously been the debit on the Time Deposit Non-Bank account (in respect of the shares in the box), had been transferred into these two new accounts. Mr Fabunmi confirmed in evidence that he had thereby “*brought into the books*” the cost/value of the shares in the box, and his memo reads (in material part) as follows:

“a. The referenced [General Ledger] accounts were created to bring all share related transactions into the books. The securities involved are shares of Intercontinental Bank plc and the details are as attached in Appendices 1 and 2” [which are the same calculations as had been attached to his joint Equity Investment Report referred to in paragraph 52 above].

(b) The investment securities balances were made up of several shares transactions which were first passed into account 160500022 (prepayments) and later passed into account 21100002).”

55. There is once again no suggestion that anyone other than the Bank owned the shares in the box, and this is why Mr Fabunmi had transferred them into the Bank’s books, from where they had previously lain concealed. It is significant that in paragraph 127 of his first witness statement (referred to in paragraph 21 above) the Defendant himself said, with regard to the share purchases said to have been made by Tropics of shares in the Bank, that they *“were made at a substantial loss, as can be seen from”* [Mr Fabunmi’s memo of 25 November – the very memo which I am now addressing]. *That loss is owned by the Bank.”* Mr Fabunmi himself therefore showed the Bank’s shares in the Bank’s books as assets of the bank.
56. Mr Olonade wrote three memos to Mr Jimoh, the first during this same period, when he was still working with Mr Fabunmi in Financial Control, dated December 9 2009, and subsequently when he had taken over from Mr Fabunmi as Head of Financial Control in March and April 2010. All of them confirm what Mr Fabunmi had said in his memo of 25 November 2009 as set out above, and again in a further memo of the same date: *“GL account 16050022 (Prepayment) is the account used for shares transactions in the Bank ... Time Deposit Non Bank is not for funding of the transactions but to clean up the transactions.”* Mr Olonade said:

“The GL account 160500022 is the general ledger account that warehoused payments for shares of the bank bought into box. Entries and balances in the account are mostly reclassified into Time deposit GL for reporting purposes [since] the Bank could not report that it was buying its own shares.”

57. He confirmed that the balances had been reclassified into an ordinary account within the Bank’s books, as instructed by Mr Fabunmi. His two subsequent memos of 29 March and 1 April 2010 do not add a great deal:

“The GL used by the bank to warehouse the payments for purchase of shares was not reported by the Bank ... because the Bank did not want to report it was buying its own shares.”

Investigation

58. The Defendant contends that the Claimant’s Investigation Team was inadequate. There was a substantial attack on both Mr Jimoh and Mr Aro. There was a positive and a negative aspect to this critique:

- i) The negative aspect is that it is directed towards discrediting any conclusions that may have been reached by either of them.
 - ii) The positive aspect derives from the suggestion that there may be documents in the possession, custody or control of the Claimant which have not been disclosed. Insofar as the Claimant's case depends upon the absence of any documents to support the Defendant's case, it is said that this is because there are or may be documents which the Claimant has not disclosed, and which could either corroborate or establish the Defendant's case.
59. This latter approach is not dissimilar to the basis upon which I gave conditional leave to defend on the Claimant's summary judgment application in respect of the Tropics Payment Claim, because there might be documents in the Tropics offices, which then remained sealed, which could support the Defendant's case in respect of the reason for the payment over of the N18 billion in the period of two months in May/June 2009. The Defendant's case is that:
 - i) there was no purchase by the Bank of its own shares; all the shares in the box (insofar as there was a box at all) were purchased on behalf of customers, held by ICML on their behalf (though not in their name), and, insofar as they were transferred out of the box, were sold on, on behalf of those customers (to other customers) (no breach of s160);
 - ii) the customers acquired the shares as a result of loans to them by the Bank in the ordinary course of business (no breach of s159).

Documents to show the existence and identity of the customers and the making and crediting of the loans have not been disclosed by the Claimant, but are believed to exist and are not accessible to the Defendant or his witnesses, since there is no reason why they should be in the possession of Tropics (the only party to which the Defendant could have access), because Mr Dada asserts that there is no reason for the stockbrokers to know the identity of any customers on whose behalf the shares were being purchased.
60. In the Defendant's submission, Mr Jimoh and Mr Aro:
 - i) failed adequately to trace, find, contact and follow up issues with ex-employees and ex-directors of the Bank;
 - ii) failed to read through every report prepared by the Inspection Department over the entire period, in case one of them might reveal something of relevance;
 - iii) failed to take and keep interview notes of those that they did interview;
 - iv) failed to trace and/or interview third party witnesses such as Summit and customers, whether Category 1 or 3 companies or otherwise;
 - v) were simply aiming to produce sufficient material to prove the Claimant's case against the Defendant.
61. A substantial number of complaints has been formulated and listed in Mr Chaisty's able skeleton, suggesting steps which might or could have been taken. But the most

significant aspect to my mind is that Mr Jimoh knew, largely because of his own experience with the Bank, that there have been loans made by the Bank in the course of its business to those who wished to purchase shares, including shares in the Bank – he estimated some N3 billion worth – which he accepted had not been disclosed. This is a matter which plainly causes concern, and appears to have come as a surprise to the Claimant’s solicitors, who have otherwise supervised with great diligence the massive disclosure which the Claimant has carried out, and I regard it as a failure by Mr Jimoh. However:

- i) The fact may be that the Bank made loans in respect of the purchase of shares, including shares in the Bank (which Mr Jimoh himself as Head of the Credit Risk Management Department who, as from November 2008, listed as one of the many shares which were “*acceptable shares for financing by the Bank*”). But none of those loans were, as is accepted, in respect of the purchase of any of the shares in the box – the 3.7 million shares acquired between August 2007 and August 2008.
 - ii) Those shares constitute (leaving aside the alleged further shares purchased by reference to the Tropics Payments) approximately 24% of the entire issued share capital of the Bank at the material time; and the monies paid out on the shares, and debited first to the prepayment account and then the time deposit account of the Bank, during that same period were (at least) N140.9 billion, as compared with the total pre-tax profits of the Bank for the year 2008, said by the Defendant to have been N45.6 billion.
 - iii) Nothing that Mr Jimoh said, in justifying his failure to disclose documents, which he conceived to be irrelevant, showing loans by the Bank in the ordinary course of business, casts light or doubt on the absence of any trace whatever of any customer or loan in respect of the purchase of the shares in the box, with regard to which full disclosure has been given. The only sign is of the loan transactions entered into (but not serviced) by the Category 1 and 2 (and 3) transferees for the purchase of some of those shares when they were transferred out of the box.
62. As to the absence of any documentation indicating the existence of loans in the ordinary course of business with regard to the acquisition of the shares in the box, before I could conclude that such documents do or may exist, notwithstanding the absence of any recording of them in the books – or indeed of any recording in the books (see Mr Fabunmi’s Report and memo referred to in paragraphs 51 to 55 above) of any suggestion other than that the shares belonged to, and/or were paid for by, the Bank – there needs to be some hint, either from the documents disclosed by the Claimant, or from the Tropics offices, now unsealed and made available, that there are such documents not disclosed; and none has been identified.
63. Insofar as it is suggested that there are customers who purchased the shares, with loans provided to them from the Bank, despite the absence of records in the books, not one such customer has been identified by the Defendant, or by those friendly to him such as Mr Fabunmi or Mr Dada, or indeed Mr Olonade or Mr Adebisi, both of whom have (as referred to in paragraph 114(i) - (ii) below), been in subsequent contact with him or with Mr Fabunmi. It is not simply a question of no disclosure, but no identification. The only names given by the Defendant as companies who are said

to have been loaned money by the Bank were the Category 1 companies who did indeed (as was disclosed) enter into loan applications, albeit in respect of the purchase of the shares from the box (subsequently reversed).

64. As for approaches by the Claimant's investigators to other witnesses, as referred to in paragraph 60 above, I agree with Mr Chaisty that the absence of interview notes is surprising, and cannot be explained by any alleged Nigerian practice of not taking notes. However the reality seems to me clear that, as Mr Jimoh and Mr Aro continually made clear, all the employees involved during the relevant period left the bank soon after the intervention by CBN and the subsequent running down and eventual merger of the business of the Bank, and have no reason to be friendly towards the Claimant; they may well owe continuing loyalty to the Defendant, and, in any event, in a number of cases are defendants to the criminal and regulatory proceedings in Nigeria.
65. I agree effectively with both parties that the conclusions I must make are not dependent upon the views of Mr Jimoh and Mr Aro, but – subject to any conclusion, which I do not make, that there has been material concealment or non-disclosure by the bank – upon my own assessment of the evidence, documentary and oral, before me. I have already reviewed the documents, and I now turn to address the other evidence.

Witnesses

66. The Claimant relies, in addition to Mr Jimoh and Mr Aro, upon hearsay statements, as referred to in paragraph 17 above. Mr Alabi, whom I describe in that paragraph, gave evidence in relation to the early investigations, and his discussion with Mr Fabunmi, which was far from central to the Claimant's case. The Claimant's concentration was on the hearsay statements from Mrs Akingbade, Mr Olayinka, Mr Fabunmi's predecessor as Head of Financial Control, also a chartered accountant, and Mr Owolabi of Summit. I have referred, in paragraph 17 above, to the documents in which the statements were contained, being either witness statements or affidavits made in Nigerian proceedings. On the one hand that makes the contents more reliable, as in each case being deposed in accordance with the (Nigerian) Oaths Act 1990, but on the other hand makes them arguably exculpatory. Although they are strictly admissible, pursuant to the Civil Evidence Act, I asked Mr Browne-Wilkinson why the Claimant had not sought to obtain their evidence under a letter of request, as all three were in Nigeria, where the second part of the hearing was to, and in the event did, take place. In the event, when the Claimant launched such application it was rejected by the Chief Justice as being "*not possible under our laws*".
67. Mr Chaisty attacks the reliability of the statements, as he is entitled to do, given that they are only admissible under the Civil Evidence Act:
- i) They have not been tested.
 - ii) They are not mutually consistent. Although each of them refers to a meeting called by the Defendant to discuss the purchase of shares in the Bank in 2007, they are not entirely consistent in their dating of it, and have a different account of who was present at it.

- iii) The Defendant asserts that Mrs Akingbade has a reason to hold a grudge against him because, for what he described in evidence as “*various misdemeanours in the department*”, he withheld her salary for months, and she subsequently resigned: although we have had a very full handover note as Head of the SDS, dated 20 November 2008, which appears entirely objective and free of complaints, and within its remit includes brief reference to the various “*special transactions*” for which SDS had been responsible.
68. The gist of the evidence I take primarily from Mrs Akingbade’s statement. She describes how “*sometime in 2007*” the Defendant held a meeting with the three stockbrokers (the in-house stockbroker ISL represented by Mr Adewoyin, Summit, represented by Mr Owolabi, and Tropics, represented by Mr Dada), at which she, Mr Adebisi and Mr Olayinka were present. Mr Owolabi, in his statement, does not mention Mr Adebisi or Mr Olayinka and places it “*towards the end of year 2007*”. Mr Olayinka describes himself as there, together with Mrs Akingbade, the three stockbroker representatives and Mr Adebisi, but he says that three others were also present, one of them Mr Ehinlaiye. He describes the meeting as “*sometime in 2007*”. However all three of them put the meeting in the Defendant’s office.
69. They all describe how the Defendant informed everybody present that the Bank intended to buy the Bank shares from the floor of the Stock Exchange, and that all three brokers would receive instructions to buy the shares, through Mrs Akingbade, who would herself receive instructions from Mr Adebisi each time the Bank wanted to buy its own shares, as to the volume of shares to be purchased. Mrs Akingbade describes how there were subsequent meetings between her and some of the other attendees in the Defendant’s office “*to discuss the volume of the Bank’s shares already purchased and to receive advice from the [Defendant] in respect of the Bank’s shares to be purchased in future*”: the other two do not mention any such further meetings.
70. Both Mrs Akingbade and Mr Olayinka describe how the shares so purchased by the three stockbrokers were warehoused in accounts in the name of ICML with CSCS, and they subsequently describe the crossing of the shares to the Category 1 companies. Mr Owolabi of Summit says that he asked for a mandate from the Defendant, and the Defendant directed Mr Adebisi to coordinate all the stockbrokers’ activities on the share purchase assignment, which instruction was given orally. Mr Dada denies that he was present at such meeting, and asserts that he was not given instructions to buy shares in the Bank on its own behalf but purchased Bank shares “*on the understanding and belief*” that they were being purchased on behalf of customers, but he accepts that when instructions to buy shares were given, they were given orally and without a written mandate, which is contrary to Nigerian regulations, although he says oral instructions are still *commonplace*. The Defendant denies that there was any such meeting or any further meetings such as are alleged by Mrs Akingbade.
71. The Claimant contends that the statements are reliable:
- i) The contents accord with the Defendant’s own pleading at paragraph 37 of the Defence and Counterclaim (before its amendment) and paragraph 41, set out in paragraph 20 above.

- ii) The fact that the accounts differ in the respects criticised is not to their discredit. The Claimant submits that it is not surprising, and suggests that they are thus not “*copycatting*”. The substance is identical.
 - iii) The statements are consistent with the contemporaneous documentation which I have discussed above, both with the accounting for the shares in the box (and the existence of the box), with the fact that the first purchases into the box were in August 2007, which would place the meeting/instructions as at a date in 2007 prior to that, with the October and November Memos and Mr Fabunmi’s two memos of 25 November 2009, and the words of the Defendant himself in his evidence as to the Strategy of the Claimant, set out in paragraph 44(ii) above.
 - iv) The evidence of Mrs Akingbade and Mr Olonade as to the subsequent crossing is corroborated by the documentation in relation to Category 1 customers.
72. The Claimant also places reliance upon the three memos from Mr Olonade referred to in paragraphs 56-57 above, again relied upon pursuant to the Civil Evidence Act. Although contemporaneous documents, they post-date the departure of the Defendant, but Mr Olonade had been employed in Financial Control during the relevant period. As to the reliability of what he says, the Claimant points out that he is in fact friendly to the Defendant (having supplied him with documents for the purposes of this hearing, as referred to in paragraph 114 below). Additionally it can be pointed out that Mr Fabunmi, in paragraph 55 of his witness statement, appears to confirm the contents of Mr Olonade’s first memo (although he does not there address in terms the reason which Mr Olonade gives for the Prepayment account having been “*used to warehouse the relevant share purchase transactions*”).
73. I turn to Mr Fabunmi. I address later in this judgment the evidence which he gave in relation to the Tropics Payments Claim, which, as will be seen, I consider to be unsatisfactory, by virtue of his change of case in the course of his evidence, which I can only conclude to be intended to assist the Defendant. But I only pay peripheral attention to that in considering the evidence that he has given in relation to this claim. There is no doubt at all that he simply “*inherited the method of accounting for the transactions in the Bank’s book from [his] predecessor*”, Mr Olayinka (paragraph 6 of his second witness statement). But his evidence was in my view wholly disingenuous in two respects:
- i) It is clear, not least from his own 25 November 2009 memos referred to in paragraphs 54 to 56 above, that he understood that the system he so inherited was unacceptable, and a way of disguising what was happening. The payment for the shares purchased into the box was made by the Bank out of a Prepayment account, which was plainly inappropriate. His account in this regard is simply insupportable from a chartered accountant. In paragraph 53 of his first witness statement he says “*Account number 16050022 was not a “prepayment account” but rather a specifically designated account used for the share transactions in the Bank called “PRPMT” ... A prepayment account is used for amounts which you have paid, but in respect of which you have not yet received value. That would not have been applicable to payments in respect of the share transactions and was not used. The PRPMT account was quite different ... the PRPMT was simply an account used to warehouse the*

relevant share purchase transactions". As he had to recognise, he himself referred to the Prepayment account that was used, in his two memos to Mr Jimoh of 25 November 2009, including the statement "*GL account 16050022 (Prepayment) is the account used for shares transactions in the bank*". Of course the position is that he knows that that course was incorrect, but instead of saying so, he purports to state that it was not a prepayment account but a "*specifically designated account ... called PRPMT*". He repeated in evidence (Day 22 p28) that "*PRPMT is not a prepayment account*" and sought to explain: "*the formation of a ledger and giving notation to a ledger does not follow defined words of the English language. You can use any notation to describe your ledger, I am saying that the account is called – that ledger balance is called "PRPMT". I did not create it. I wouldn't know why it was labelled like that.*" He does not do himself justice.

- ii) The other, and significant, respect in which I found his evidence unreliable was in his attempts to explain, or explain away, the clear picture he gave in the Equity Investment Report, which he co-authored, and indeed his own action in bringing the contents of the Prepayment account and the Time Deposit account into the Bank's books, namely that the shares in the box were assets of the Bank. It would seem to me implausible that a chartered accountant would say so, unless he had believed it, although in the passage in cross-examination, which I have quoted in paragraph 53 above, he seemed to say that he was taking it all on trust. However I note the content of his own first witness statement, namely:

"17. When I became Financial Controller in November 2008 I conducted an analysis of the Bank's trading and other accounts so that I could familiarise myself with the extent of its interests, commitments and activities. I considered this to be an integral part of my function. Along with various other matters not relevant to these proceedings, I ascertained that at that time from the Bank's general ledger that it had expended approximately N161 billion on the purchase of shares in the Bank itself between April 2007 and November/December 2008.

...

19. N161 billion was a very significant sum to have been expended on shares and therefore I was keen to gain a better understanding (from a risk and financial control perspective) of the full extent of the Bank's commitment and liabilities in this area. I also wanted to gain an understanding of the processes by which the shares were being acquired from a financial control perspective. My primary focus was to ascertain the completeness and accuracy of the shares transactions.

20. From an audit perspective and given my responsibilities as the Financial Controller, I also wanted to establish whether the N161 billion represented the total value

expended on shares, or whether there were still sums which had yet to be paid or processed. It was not clear to me from my discussions with the SDS team that they had a handle on precisely how much, if anything, was still owing to the stockbroking houses or, indeed, who had custody of the Bank's shares.

...

49. As Financial Controller I sat on the Bank's Asset and Liability Committee, ALCO. I confirm that the acquisition of shares were discussed between and widely known about by the members of ALCO during this period. ALCO met weekly every Friday between 8 and 11 am, and its membership included a wide cross-section of Bank personnel. In addition to the Financial Controller and Head of Treasury, ALCO members included the heads of the following departments: Domestic Operations, Foreign Operations, Enterprise Risk Management, Inspection and Internal Control, Group Chief Risk Officer, the CEO (if available, as he frequently travels on official assignments for the Bank) as well as the Executive Directors. In total this committee had some 20 members.

50. The ALCO members were aware that the three stockbroking houses predominately used by Bank (Summit, ISL, Tropics Securities) had been mandated to effect substantial share transactions on the Bank's behalf."

74. In any event, it is apparent that Mr Fabunmi had a good deal of his own knowledge from prior to his becoming Head of Financial Control and commencing these investigations. I refer to:
- i) his own handwritten notes referred to in paragraph 37 above, which show that he was plainly involved in proposals to cross the shares in the box;
 - ii) his further role in the persuasion of Category 1 companies, apparent from a memo dated 5th May 2009 from a Mr Jari to the Defendant, which led to the reversal of the transactions there dealt with, which referred to the original contact in May 2008 having been by Mr Fabunmi (a matter denied in evidence by Mr Fabunmi), and
 - iii) the two authorisations to reverse given by the Defendant expressly referring to Mr Fabunmi set out in paragraph 48 above.
75. Mr Fabunmi had a role which, in my judgment, would have led him to know that what he was saying in November 2009 was actually correct, whether or not he was only Executive Assistant (a position of itself which carried great influence, as appears from the Defendant's memo of 22 August 2008, stating that any memo purporting to have come from his office "*must either be signed personally by me or by Mr .. Fabunmi the Executive Assistant*") for the period he alleges (see paragraph 37 above), and whether

or not, as the Claimant alleges – but the Defendant and Mr Fabunmi deny – he received shares from the Defendant.

76. The relevance of Mr Dada and Mr Thomas, both of whom primarily gave evidence in relation to other claims, is not central on this claim, save that Mr Dada denies, as I have set out above, that he was present at any such meeting in 2007 as is deposed to in the Nigerian proceedings and is the subject matter of the hearsay statements referred to above. Again I set aside for the purposes of my consideration of this claim, the unfavourable view I formed of Mr Dada in relation to his evidence with regard to the Tropics Payments Claim referred to in paragraphs 121 to 130 below.

77. In his first witness statement Mr Dada described how *“the process by which we were given our instructions to trade was always the same”*: there were meetings between Mr Adebiyi and all three stockbrokers *“usually very early, at around 7 am or 8 am”*, when Mr Adebiyi would *“simply tell the three stockbrokers that we were to purchase X volume of shares in company Y at a price of not more than Z Naira ... Mr Adebiyi gave us a standing instruction that we should try to source large volumes of shares in certificate form at favourable prices ... The basic (agreed) position was that the Bank was a major client for each of us and we were not in it to compete amongst ourselves. We therefore agreed to split purchase mandates between us so that the commission was shared”*. This suggests that the purchases of such *volume of shares* was for the Bank itself, but, in his third witness statement, Mr Dada *“sought to correct any misleading impression inadvertently given in my first statement”*:

“2. ... Mr Adebiyi did not give any instructions to me, or as far as I am aware anyone within Tropics ... Summit ... or ISL to buy shares on behalf of the Bank itself. At no time did I, through Tropics or otherwise, seek to effect such purchases on behalf of the Bank itself.

...

5. ... In short, Dr Akingbola did not direct Tropics to buy shares in the Bank for the Bank and if such had been given I would not have been prepared to carry out such instructions ... At all material times I proceeded to purchase shares in the Bank on the basis that these were for third parties and at no time was I given any impression, from Mr Adebiyi, Dr Akingbola or indeed anyone else within the Bank, that the position was otherwise ...

...

8(5) Mandates were provided by Mr Adebiyi. He was not prepared to tell the stockbrokers the identity of the relevant customers and that was accepted practice (and was not in my view unusual). There was no need for the stockbrokers to know the identity of the individual customers and there was nothing suspicious or untoward in Mr Adebiyi not wanting to tell us.”

In the event these oral transactions led to total purchases of Bank shares by Tropics (not including the alleged Tropics further payments), according to the SDS reconciliation from August 2007 and August 2008, of 283,357,119 shares at a cost of more than N8.2 billion.

78. Mr Thomas's evidence is on the face of it neutral, in the sense that he says, at paragraph 3 of his witness statement, that "*I wish to make it clear that I was not aware at any material time that ICML held any shares in the Bank other than those sold by ICML under its fund management function.*" What is now said by the Defendant by way of explanation for the "warehousing" of the shares in the box in the name of ICML (and not in the name of any customer) is that they were held by ICML as security in respect of the loans allegedly made to the (unidentified) customers. That seems odd, and the Claimant contends that, had this been the case, the shares would still have been registered with CSCS in the names of the alleged customer. Indeed such was the case according to a Schedule of shares obtained through loan facilities, prepared by Tropics in October 2008. However the fact that ICML did not know that 3.7 billion shares were in its name is more consistent with the Claimant's case. The Defendant, when asked about this, pointed out that ICML is an in-house company and "*I believe those who are doing this know that ICML is a subsidiary and the shares would never be lost. So I want to believe it's for income reasons that they were keeping it from Thomas; this is my thinking.*" It seems strange to "keep from" ICML that they had, and continued to have for more than two years, billions of shares in their parent company, when any "income reasons" could easily have been resolved as between parent and subsidiary.
79. I turn finally to the Defendant. He is obviously a most impressive man, and he founded and built up a Bank of which he was no doubt immensely proud. He is also, in my judgment, a very forceful man with a very strong character. His regular turn of phrase "*I want to believe that*", is not, or not only, a way of putting forward a case that is not, or not necessarily, consistent with the facts before him, but, I suspect, a regular turn of phrase used when he expected people either to do, or to have done, what he wanted. I have no doubt that all the staff in the Bank were in awe of him and of his authority and that, although he was plainly not a "*details*" man, leaving it to others to put into effect what he instructed, I do not accept or believe that anything major in the Bank could have occurred or did occur without his knowledge.
80. He says that he did not follow accounting, such that he would not have appreciated the use or abuse of a 'prepayment account', but I believe that with his experience – a banker for 40 years – he would have been well able to appreciate the difference between shares and other assets which were on and off the books. He himself said in evidence (Day 14, p39) that he approved all loans in the Bank, because that was his responsibility, and I have no doubt that, while taking on board the recommendations of his executives made to him, he would have appreciated in general terms the nature of every transaction which he thus regarded as his responsibility to approve. It is clear that he is no expert at emails, and indeed may well have left it to his secretary or assistant to put them or their contents before him (such that, for example, he did not appreciate that an exchange of emails must be read from bottom to top), but again I am in no doubt that he read everything that was put before him, particularly the reports and memos, and especially where they were presented and discussed at meetings at which he was present.

81. In particular I am satisfied that he would have understood the content of the October and November Memos and the Insider Trading Memo. If, when reading those, he had either disagreed with, or not known of or understood, anything there contained, he would certainly have made his views very plain and would have had something done to rectify the position. He said (Day 18, p123) that he did not believe that SDS were buying or selling the Bank's shares, but that if they did it was not with his knowledge or, he believes, that of Mr Adebisi, and he opined that it could have been done without his knowledge because of the size of the Bank – *"it could be done, because it's a very extensive organisation, it could be done if somebody decides to run riot"*. However that ignores the degree and depth of his knowledge, as is clear from the documents which I have summarised above, and, in particular, the meeting of 1 September 2004, with the documents which were not only clearly discussed, but which led him to write his subsequent memorandum of 2 September (referred to in paragraph 26 above) and the October, November and Insider Trading Memos.
82. Of course the Defendant rightly emphasises the size of the Bank in his evidence (Day 12, p67): *"This is an organisation ... of over 350 branches, over 20,000 people, 10 subsidiaries, the branch in Ghana ... 30 different offices. I have 8 executive directors. There is no way in which I can know everything going on. That is number 1. Number 2, this is a Bank that, volume of transactions in a year we run into at least, let me say, 8 trillion"*. However, quite apart from his knowledge as is apparent from the documents, he himself made clear how (understandably) he was interested in the identity of his shareholders, and, at Day 12 p70 he said, *"I want to know those who are holding large quantities of our shares. I always want to know"*. I am also satisfied that he knew and kept a thorough eye on the share price, and that the Executive's concentration on increasing that share price, which is apparent from the documents referred to at paragraph 31 above, entirely reflected his own preoccupations. I am satisfied that he did, at a time when he knew and intended that the share price was going to rise substantially, enter into the Dangote agreement, referred to in paragraphs 33 and 34 above, in order to acquire 435 billion shares in August 2007, and did acquire them, with a view to taking advantage of that rising share price.
83. Against this background, it is unsurprising that (i) he felt the need to deny (until faced with his own witness statement) that he had considered and discussed the content of the October Memo with Mr Adebisi, (ii) denied the Dangote agreement and share purchases resulting therefrom against the clearest possible evidence to the contrary, and (iii) denied that there was a box, or at any rate that he had heard of a box, or that the Bank held shares in the box, in the light of the constant references in a document (the Insider Trading Memo) which he had clearly received and considered (see paragraph 45 above). Those are three of the obvious lies which he told in the course of what was a relatively gentle, though very lengthy, cross-examination by Mr Browne-Wilkinson. But does it mean that the Claimant has made out its case against him?
84. The Claimant's case is that there was an illegal share support scheme whereby the Bank purchased the shares in the box. That is sufficient to establish the unlawfulness, but it then traces the picture forward by showing the purported crossing of the shares out of the box, and then those transactions or, in some cases, purported transactions, are cancelled and reversed, just as the Bank subsides towards its collapse and the

intervention of CBN. I am satisfied that this is proved by the evidence which I have set out above and in particular:

- i) The shares in the box were simply purchased with the Bank's money, debited first to the Prepayment account and then to the Time Deposit account, and no moneys were ever either accounted for or received in respect of any other purchaser than the Bank. The shares were then effectively off-balance sheet and *warehoused* in ICML (without Mr Thomas's knowledge).
- ii) There is no sign whatever of any customer involved, either by way of seeking or receiving loans in respect of any of the purchases in the box or indeed in respect of the intended disposal of the shares which the Bank had purchased.
- iii) No repayments of interest or capital were ever made or debited in respect of the purchase monies of the shares in the box.
- iv) No dividends were paid to anyone other than the Bank (as explained by Mr Fabunmi in his memo to Mr Alabi of 4 November 2009). The Defendant attempted to explain this in cross-examination by suggesting that "*if these customers had borrowed and they had not fully paid, it would be foolhardy for the Bank to be returning a dividend to them. Dividends should be used to reduce their loan or to pay the interest*". But this is plainly unsustainable where there is no evidence of any security arrangement with anyone to that effect, and no dividends were ever paid to anyone, even at a time before any alleged default by any of the alleged customers.
- v) 'Crossing' to the Category 1, 2 and 3 transferees was only possible if it was the Bank that was the vendor – there is no sign of any involvement at all of any purported shareholder/vendors, nor any accounting to them when the shares were crossed to the purported new owner.
- vi) So too was cancellation/reversing of the purported transfers to the Category 1, 2 and 3 transferees only possible if the Bank was the original vendor, and, once again, there is no indication of any participation, in the purported cancellation/reversal/return of the shares, by any original vendor. The Defendant effectively accepted this when answering a question of mine at Day 13, p148, when I suggested that if I sold him something and he agreed to buy it from me and then, for whatever reason, it was agreed that the transaction would be reversed, then I would agree to take it back and give him back the money, but that I could not see how that applied where he did not accept that the shares in the box belonged to (and had been sold by) the Bank. His answer was:

"We sold them the shares ... we actually sold shares to them ... and it's not just we cancel because we were friendly with them, because we look at all their business interests: for example ... if I know that you ... recently gave me your used car and, if I don't make you happy, you can take the car back from me, I will give you your money [back], because what I am losing is less than what I will

have lost, so that our decision, the commercial interest of the Bank.”

The Defendant agreed with me that what he was saying was that:

“We actually sold them the shares ... the shares which you owned and you sold them, then, of course, you can cancel the transaction.”

- vii) In any event, transfer of the shares from one shareholder to another shareholder would not achieve what they wanted. What was required was a purchase of shares (in the event by the Bank) from the open market, thus increasing the share price, and, as and when such became required, transfer out of the company to the Category 1, 2, 3 transferees in an unsuccessful attempt to divest the Bank of the shares, but without disturbing the share price.
 - viii) No customers at all have been identified as having been the purchasers of the shares in the box. This is not a question of alleged failure to disclose by the Claimant. Neither prior to the hearing, when the Defendant had the opportunity to name any customers which he alleged had purchased the shares in the box, prior to my making a specific disclosure order, nor even in evidence, was there any naming of such customers. No such customers have been called. Nor have Mr Adebisi or Mr Olonade, despite the fact that (as appears in paragraph 114 below) both have remained in touch with and/or favourable towards the Defendant.
 - ix) The documents are wholly clear, in particular those which without doubt were known to the Defendant, the September 2004 documents and the October, November and Insider Trading Memos. The Strategy was for the Bank to purchase shares and there is no suggestion anywhere of its being limited to *matching buyers and sellers* – nor indeed would that have been of any advantage to the strategy, as set out in (vii) above.
 - x) The Strategy was successful – but at a very substantial cost – see paragraph 61(ii) above.
85. The defence of the Defendant, apart from his assertion that he was not party to any purported strategy, is that the shares in the box were purchased by customers with the benefit of loans from the Bank. For the reasons I have set out above, I do not accept this. None of the shares in the box were purchased by customers with loans from the Bank. However, even if they had been, they would not have qualified for the *ordinary course of business* exception within s159(3)(a). It is common ground between the legal experts, as set out in paragraph 10(ii)(a) above, that the question whether loans for the purchase of the Bank’s own shares were advanced in the ordinary course of business does not depend upon whether the Bank does lend money, even for the purchase of shares, in the ordinary course of business, but whether the particular loans were in the ordinary course of business, and that the principles of **Steen v Law** and **Fowlie v Slater** apply. Mr Browne-Wilkinson, in his opening skeleton, set out matters as to which Mr Chaisty has not been able to disagree that if the facts were so found, it would mean that, if there were loans to customers for the purposes of acquisition of

shares in the box, they cannot possibly be in the ordinary course of business. I set out a sample of such matters from paragraph 92 of his opening skeleton:

“92. For its case that the purchasing of the shares in the box under loans to customers was not in the ordinary course of business, the Claimant would note the following:

(i) the lending was specifically for the purchase of shares in the Claimant, was not at the free disposition of the supposed borrowers, was confined to special use and was utilised at the behest and control of personnel at the Claimant under the direction of the First Defendant and not by the borrowers;

(ii) the borrowers therefore had no choice as to the use or disposition of the funds other than for the purchase of shares in the Claimant.

(iii) the lending was towards a scheme or course of conduct determined by and/or with the approval of the ... Defendant for purchasing the Claimant’s own shares;

(iv) the circumstances in which the lending was specifically directed by the ... Defendant to be utilised for the purchase of the Claimant’s shares was within a scheme or course of conduct whereby huge amounts of the Claimant’s funds were used to purchase its own shares in order to distort the market and the Claimant’s share price (and whereby that undermined the stability and financial integrity of the Claimant;

(v) the loan applications were procured by the ... Defendant personally and the ... Defendant was seeking borrowers specifically so as to allow the Claimant to manipulate the share market;

(vi) the scale of the lending involved amounted to the purchasing of some 25% of the total issued share capital of the Claimant ... (and the scale of the expenditure can also be compared to the 2008 pre-tax profits of the Claimant which the ... Defendant says were N45.6 billion ...

...

(viii) the lending was on uncommercial terms and without any or proper documentation.

(ix) there was no proper processing of supposed loans in accordance with the Claimant’s ordinary lending business (including with regard to the necessary terms, fees and interest) and loan approvals were not processed or reviewed according to the Claimant’s procedures for lending or in any way that

would make it in the ordinary course of business but by the ..
Defendant personally;

(x) there was no appropriate security taken or obtained;

(xi) the shares were not transferred to the customers;

(xii) repayments of the loans were not sought or made;

(xiii) funds were not advanced and there was no disbursement
or release of funds to the borrowers;

(xiv) the lending was subsequently simply reversed and
cancelled at the ... Defendant's direction."

In the event the answers given by the Defendant in cross-examination effectively rendered the defence a non-starter, even by reference to subparagraphs (i) to (iv) of Mr Browne-Wilkinson's list alone (Day 12 pp112 ff):

"Q. Am I right in thinking that, on your case, when such loans were made, they were made for the specific purpose of buying shares in the bank?

A. Yes.

Q. Am I right in thinking that, on your case, when such loans were made, the purpose or the desirability from the point of view of the bank was that, if customers used such loans to purchase shares in the bank, that would have the effect of maintaining the bank's share price?

A. I'm not sure that was our major objective. Our major objective was to make profit for the bank, so lending generally is for us to be profitable. Not necessarily whether as we were financing our own shares, we were equally financing shares of other in situations, as you have seen from all the documents that are disclosed. So it is not just the bank's shares. So the main purpose was not because they wanted prices to go up; no, we just wanted to make profit for the organisation.

...

Q. If the purpose of the loans was to maintain the share price in the bank, that would not be a proper purpose for the loan, would it?

A. No, it would not be, because the viability of the loan would not be considered. It will not be.

Q. But it wouldn't be proper, what I'm suggesting to you is it wouldn't be proper, and you would accept this, that it would

not have been proper to make loans for the purpose of maintaining the share price?

A. Yes it would not be."

86. If this is a case in which loans were made by the Bank to (unidentified) customers, to purchase the 3,748,070.511 shares, at a price ever increasing (until April 2008), in a total sum of N141bn (approximately £500m), I am satisfied it would not have been in the ordinary course of business.
87. In any event, it is clear, for the reasons I have given, that this was not the case. The Defendant's Strategy I have quoted from his evidence (Day 13, p50) at paragraph 44(ii) above). He said: "*There was a strategy to purchase shares and sell them to high net worth individuals*". When asked the date when this Strategy was decided upon, he said that he was trying to recollect, and it was either 2007 or 2008, but was said to be by reference to what he called the Ghana strategy meeting, which Mr Chaisty volunteered, by reference to information from PriceWaterhouseCoopers, to be 23 and 24 April 2007. His explanation was then that "*what that meeting was recommending to us was to encourage directors, high net worth individuals, politicians, to buy shares from the Bank and, as we're getting orders and as we even give some of them loans ... they were of course buying for them, so it was transferring the shares from one party to the other.*"
88. In the absence, as I am satisfied, of any loans, what the Bank then did to implement the Strategy (and this is clear from the evidence of Mrs Akingbade, which I accept, and the contemporaneous documents), was to purchase the shares. It may have been intended subsequently to sell them on to high net worth individuals, and it may be that the Category 1 customers a year later can be so described, but what occurred in relation to the shares in the box was plainly contrary to s160, and was the Defendant's Strategy. It has not been suggested that it was anyone else's e.g. Mr Adebisi, but in any event I am clear, not only from what is said by Mr Adebisi and Mrs Akingbade in the November and Insider Trading Memos, but from my conclusion as to the Defendant and the way the Bank was run, that the unlawful Strategy was his. It was hidden in the books, hidden by virtue of the absence of written instructions to the stockbrokers and hidden by virtue of the warehousing in ICML. All that JP Morgan could see was an apparently unjustified massive rise in the share price over the months prior to its report at the beginning of May 2008.
89. So, I must grapple with the elegant and beguiling argument of Mr Chaisty, which is based upon three propositions:
- i) The documents which are so heavily persuasive of the unlawful scheme and of the Defendant's involvement in it, were open documents, in the sense that they were circulated within the Bank, and not destroyed.
 - ii) The Strategy required the involvement of a large number of executives, whose silence could not be relied upon.
 - iii) The Defendant knew that it was unlawful to purchase shares (see paragraph 29 above) and thus cannot have implemented the Strategy without knowing that it was unlawful.

90. Irrespective of these arguments, I am entirely satisfied that the Claimant has proved its case on the balance of probabilities, and taking into account the serious nature of the allegations, and that, even in the absence of any live witnesses for the Claimant, which gives the Defendant the best opportunity to put forward an explanation which cannot then be rebutted, he has given no explanation. However, as to Mr Chaisty's arguments:
- i) As described above, it was not carried out openly, but was concealed from the books and hence the auditors and from the stock market. There was open discussion as recorded in the various memos, but Mr Olonade's memos referred to in paragraphs 56 and 57 above, ring particularly true: "*the Bank could not report it was buying its own shares*". Absent the wholly unlikely event, as it must have seemed, of the failure of the Bank, no outsider would see the documents, and the executives involved were all part of a thriving Bank in which they were content to take the lead of the Defendant that nothing was wrong.
 - ii) It may well be that the Defendant was able to persuade himself, in order to project that there was nothing wrong to his staff, that what was occurring was in the ordinary course of business by a bank and could be justified by reference to an explanation, satisfactory to himself, that the acquisition of the shares involved loans to customers. That is what he would "*want to believe*". I suspect the Defendant simply concluded that he, and his Bank, were inviolable.
91. As for the oral evidence for the Defendant, the Defendant himself has given no coherent explanation of the shares in the box, which I am satisfied were purchased by the Bank with its own funds. As for his oral witnesses, as is so often the case, I conclude that their earlier versions are closer to the truth than those they have given in the witness box, when they attempted to reconstruct and to assist their former mentor. As to Mr Fabunmi's version, given in his Report and his two Memos in November 2009 (paragraphs 51 to 55 above), they reflect the true position: and as to Mr Dada, though I conclude that he was present at the meeting in 2007 when the Defendant laid out his Strategy, as described by Mrs Akingbade, Mr Olayinka and Mr Owolabi, in their hearsay statements, his first version, before he sought to *correct any misleading impression* (see paragraph 77 above), reflects what actually occurred when the three stockbrokers were given regular instructions by Mr Adebisi to buy shares on the Bank's behalf during the period between August 2007 and August 2008, when the Strategy was being executed.
92. The Claimant's case is proved. What remains is a consideration of the very substantial quantum, which is plainly beyond the means even of this very wealthy Defendant. I leave aside at this stage the additional N18bn, which is the subject of the Tropics Payments Claim, although it is plain that if it were the case that the payments made to Tropics were a belated reimbursement of the purchase price laid out by Tropics in 2008, in respect of yet more shares in the box, then the effect would simply be to increase the claim under this head. I have referred, in paragraph 4(i) above, to the sum which is claimed by the Claimant of N144,992,748.108. This results as follows:
- i) The N140,969,395,021 agreed figure, derived from the SDS reconciliation.

- ii) The late payment made to Summit in respect of shares in the box, approved by the Defendant, as appears in paragraph 47 above: N381,498,194.
 - iii) The 2007 share buyback approved by the Defendant, which shares were placed in the box, as appears in paragraph 35(ii) above, N4,156,784,357.08.
93. All these figures were agreed and reconciled between (among others) Mr Aro and Mr Olonade at a meeting on 24 March 2010, as were further figures. Those latter figures have now been reviewed and, after probing by Mr Chaisty, have now been conceded by the Claimant, such that the only remaining claims (not in dispute) relate to the crossing charges incurred by the Bank in the crossings from the box to the Category 1 and Category 2 transferees, a total of N682m and N438m, namely N1,020,953,915. There are then agreed credits to be given in respect of dividends received by the Bank, totalling N1,441,344,379.82 and payments received from M & J in part payment due under the crossing of shares to them (see paragraph 38(i) above), totalling N94,539,000.
94. I am entirely satisfied that this sum is due. The Defendant points out that, in relation to a number of shares which either were or had been in the box, those shares were voted at the time of the merger. I cannot see that this has any bearing on the loss incurred, nor has Mr Chaisty, in the event, sought to argue that.
95. What he does argue relates to the fact that the Claimant has calculated its loss on the basis that all the shares in the box were worthless, and Mr Chaisty submits that at least some value should be placed upon them. Although a figure of 5 Naira per share was bandied about, at the end of the day the only possible relevant figure could be the 2 Naira that was originally and (the Claimant says) in error credited in or about February 2010 when 27 million in the shares in the box which had been crossed to Taiwo Adesanya & Co was sold, but then the sale was reversed. I do not know the circumstances in which the sale was originally entered into or was reversed. But I am completely unable to conclude from that that not 27 million but 3 billion shares could have been sold at all, or certainly for the 2 Naira price, which is of course itself a pure token figure.
96. Mr Chaisty accepts that he has not pleaded on the Defendant's behalf (nor has sought to do so by amendment) any allegation against the Claimant of failure to mitigate. He submits that his defence is simply one of causation. I am satisfied that the result of the unlawful share scheme imposed on IB by the Defendant was that it was left (in the absence of any failure to mitigate) with valueless shares and a loss of approximately N145 billion. Given that the 27 million shares were sold at 2 Naira each, and the sale was reversed in circumstances I am not told of, I am prepared to deduct the N14 million from the total loss, but that still leaves a figure of N144,964,975,408, being well over half a billion pounds.
97. The issue of relief under s558 of CAMA, then arises (whereby, in the same way as s727 of the Companies Act 1985):

“558. Power of court to grant relief in certain cases.

(1) If in any proceedings for negligence, default or breach of duty or breach of trust against an officer of a company or a

person employed by a company as auditor it appears to the court hearing the case that the officer or person is or may be liable in respect of the negligence, default, or breach of duty or breach of trust, but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case, including those connected with his appointment he ought fairly to be excused for the negligence, default or breach of duty or breach of trust, that court may relieve him, either wholly or partly, from this liability on such terms as the court may deem fit.”

98. I shall return to this issue when I have considered the remaining claims against the Defendant.

Tropics Payments Claim

99. The total of N16.185 billion (approximately £68.9 million) was paid out by the Claimant during a period of six weeks to, or to the order of, a number of companies in the Tropics Group:
- i) on 11 May 2009 by three manager’s cheques in the sums of N1,214,368,896 to Tropics Securities Ltd, N4,379,549,129.37 to Bankinson Nigeria Ltd and N4,406,081,973.82 to Tropics Properties Ltd (“Tropics Properties”):
 - ii) on 13 May 2009 by a transfer in the sum of N150 million to Tropics Finance:
 - iii) on 15 May 2009 in the sum of N500 million to ISL for the credit of Tropics Securities and in the sum of N350 million to Intercontinental Homes (Savings and Loans) Ltd (as collateral security, fees and interest in respect of a loan to Tropics Finance):
 - iv) on 19 May 2009 in sums of N1.5 billion and N200 million to Tropics Finance:
 - v) on 21 May 2009 by a transfer of N1.5 billion to Tropics Finance:
 - vi) on 22 May 2009 by a transfer in the sum of N50 million to Associated Discount House Ltd to the order of the Tropics Group:
 - vii) on 26 May 2009 by a transfer of N150 million to Tropics Finance:
 - viii) on 4 June 2009 by transfers of N600 million and N150 million to Tropics Finance:
 - ix) on 8 June 2009 transfers of N50 million and N25 million to Tropics Finance:
 - x) on 11 June 2009 a transfer of N200 million to Tropics Finance:
 - xi) on 18 June 2009 by a transfer of the sums of N200 million and N35 million to Tropics Finance:
 - xii) on 25 June 2009 by a transfer of N324,500,000 to Tropics Finance:

- xiii) on 26 June 2009 by a transfer of N200 million to Tropics Finance.
100. These sums were paid out during that short period at a time when it is accepted by the Defendant that the Bank was undergoing a severe liquidity crisis (and in the event less than two months before the CBN intervention): it constitutes, in a six-week period, a payment out of a sum which was 40% of the net profit for the year 2008 (see paragraph 61(ii) above).
101. The payments are said by the Defendant to have been in respect of sums owed to Tropics Securities, one of the Bank's three stockbrokers (of which, as appears in paragraph 2 above, the Defendant was a director) in relation to the purchase price of shares in the Bank, laid out by Tropics Securities on the Bank's behalf in July and August 2008, some nine months earlier. Mr Fabunmi authorised the payments, and he gave evidence about the circumstances in his first witness statement, as follows:

"27. In the case of Tropics Securities, I was told by Mr Adebisi in early May 2009 that very significant amounts were owing in respect of transactions which went back as far as July or August 2008. I was not involved in the discussions which I was told by Mr Adebisi had taken place with Mr Dada concerning the outstanding payments ...

28. ... [Mr Adebisi] confirmed that he had reviewed the various payment demands that had been made by Tropics Securities and was satisfied that the amounts claimed were due. He explained that they related to the purchase of shares in the Bank which he had mandated ... I was happy to proceed on the basis of his verbal confirmation, but on each occasion when I was asked to process the payment demands, I spoke with him to confirm that the specific payment amount should be processed ... With the benefit of hindsight it would have been preferable for me to have obtained Mr Adebisi's approval in writing to avoid any suggestion that he was not involved ...

...

30. When I received [the first payment request on 8 May 2009 for N10 billion, being the three sums set out in paragraph 99(i) above] I immediately spoke with Mr Adebisi. I recall discussing this payment request in particular with Mr Adebisi due to the large sum of money involved. Mr Adebisi explained that back in 2008, the Bank had agreed to finance the purchase of a substantial number of unregistered shares on behalf of investors and customers of the Bank using Tropics Securities as one of its brokers. Many of these customers, in particular prominent politicians, had subsequently defaulted, as a result of which the Bank was forced to take possession of the shares ... Tropics Securities had been mandated by the Bank to execute these transactions but had not yet been paid by the Bank ... Given liquidity issues affecting the Bank ... he told me that payment to Tropics Securities would need to be made in stages.

31. ... *I had no reason to question or doubt what he was telling me in relation to these outstanding payments and it was completely within his authority to review and approve the payment demands in respect of transactions which he had personally mandated. Nevertheless, I did independently call Mr Dada to check that Tropics Securities had the shares in question before each payment request was met ...*

...

35. ... *I was aware ... that Tropics Securities (with ... Summit and ISL) had been mandated by the Bank to acquire a substantial volume of shares on behalf of the Bank (N161 billion) since April 2007. I believed the payments requested by Tropics Securities in May and June 2009 to be in line with these previous transactions.*

36. ... *It was confirmed to me by Mr Adebisi ... that the requested payments were outstanding and should now be paid. ... It was not my responsibility to audit the decisions taken by Mr Adebisi to acquire the shares or to question his confirmation that payment was now due."*

He repeated in paragraph 9 of his second witness statement that he had simply accepted Mr Adebisi's word for it and it was "*outside my remit to question what Mr Adebisi said or to ask him to corroborate his account with documentary evidence.*" He neither saw nor asked for any record of the quantity of shares said to have been purchased, or the dates of share purchase, and he simply responded to and approved letters addressed to the Group Chief Executive (attention Mr Adebisi) requesting "*payment for shares purchases*" with (in the case of the 11 May 2009 payment) a request for three cheques made out to the three proposed beneficiary companies within the Tropics Group, as set out in paragraph 99(i) above.

102. The alleged share purchases the subject matter of these substantial payments in May/June 2009, said to have occurred in July/August 2008, were not included either in the SDS schedule or in Mr Fabunmi's schedule attached to the October and November Memos, referred to in paragraph 101 above: this notwithstanding that the November 2008 Memo was a report by Mr Adebisi, who is said to have been the person giving the instructions for the purchases in July/August 2008, and that the Schedule recorded Tropics' purchases of shares including a number in June and August 2008.
103. When Mr Fabunmi delivered his report to the Inspection Group referred to in paragraphs 51-52 above in November 2009, there were now added to the N141 billion shares in the box (plus the further reconciliation referred to in paragraph 93 above, which had taken the total up to N161 billion), the additional N18 billion, which Mr Fabunmi himself had caused to be paid out in May and June 2009. How they are recorded is however very strange. Whereas all the other entries are dated, and are recognised by the share price in question on the relevant date, so that shares can be multiplied by that price so as to arrive at the gross figure paid on a particular date by a particular stockbroker, there is a list of 19 additional entries against "*Tropics*", with

quantities which bear no apparent relationship to the payments out which Mr Fabunmi had caused to be made, with dates varying from 11 May 2009 to 30 June 2009 said to be the purchase date (not July/August 2008) and a price per share for every single entry of N18.75. This was, Mr Fabunmi now explains, simply an estimate, not derived from any records, and on the basis that he did not know the details and left it to his team to put together an estimate. As to how the calculations were arrived at, all is unclear, not least since we are now told by Mr Dada (in his second, third and fourth witness statements) that he allegedly agreed with Mr Adebisi that the payment of N18.6 billion included a sum in respect of interest *“to reflect the significant delay in payment by the Bank and the fact that costs had been incurred in obtaining short term funding from Access Bank”* and that Mr Adebisi *“agreed that [the Bank] would meet those interest and charges as [the Bank] had always done on past delayed payments, and the amount of N2,672,066,903.52 in addition to the amount spent on the share purchases covered such.”* The total of shares represented in the *Estimated* schedule to Mr Fabunmi’s report (which allocated the full amount of N18.6 billion without concern for interest), by reference to the alleged price of N18.75 per share, amounted to 996,507,000 shares.

104. It is in relation to these payments that the Defendant, originally, in the unamended Defence at paragraph 37 and in his first witness statement at paragraph 127, gave the explanation as to purchase by the Bank of its own shares referred to and set out at paragraphs 20-21 above; but by the amendment and by his second witness statement he gave the explanation (which I have, as above, rejected) that purchases of the bank shares into the box were made on behalf of customers, by virtue of alleged loans to those customers. However, in any event:
- i) there were no shares in the box in respect of the payments made to Tropics in May/June 2009, and the amount simply had to be added by Mr Fabunmi and his team to their previous calculations in November 2009.
 - ii) The purchase of shares into the box had been at its most vigorous in the year between April 2007 and April 2008, and by July 2008 was tailing off almost to nothing. It is now said that an extra N18 billion was spent at that time, a more than 12% increase in the total.
 - iii) As with all the other purchases of shares into the box, as discussed above, there is no sign of any purchasers other than the Bank or of any loans for such purchase. There was found at the Tropics offices a list, dated 29 October 2008 and signed by Mr Dada, which stated *“kindly find below the list of all share loan facilities/lien routed through our organisation as requested by you”*, and the alleged purchases in July/August 2008 do not appear in that list.
105. The total amounts expended by Tropics on shares in the box according to the SDS schedule carried out in December 2008, referred to in paragraph 9 above (which, as set out in paragraph 102 above, did not include the alleged further payments/purchases), totalled, in respect of the period from September 2007 to September 2008, N8,277,181,901.93. The total now said to have been additionally laid out by Tropics, on further such payments in July/August 2008 and left unpaid until May/June 2009, of N18 billion is well over twice that sum. As appears in paragraph 101 above, Mr Fabunmi was told that sums were still owing, after some nine months. Although there are no documents before me showing any previous

material delays in payment, but rather a number of annotated demands directing speedy payment, and an explanation that the practice was for payment after three days (“T + 3”), nevertheless Mr Jimoh accepted in evidence that there were delays in payment, although, he asserted, never for this kind of period; and the only letter of complaint that I have seen is from Mr Dada dated 13 June 2007 referring to an “*unhealthy practice of delaying payments for transactions beyond the settlement cycle of T + 3*”, where payment was outstanding after eight days. There is no sign of interest being paid by the Bank to Tropics on “*past delayed payments*”, as asserted by Mr Dada (set out in paragraph 103 above).

106. Attention is however drawn to the position of Summit. They wrote a letter on 30 January 2009 to the Bank to “*bring to your notice that the transaction done on your behalf on 7 February 2008 was not advised and as such has not been paid for*”. The total shortfall in payment claimed was N3,472,161.48. I make reference to this in paragraph 47 above. As the Claimant asserts, however, this is a very different matter:
- i) it appears to arise not out of any failure by the Bank, but on an omission on the part of Summit to make a claim for it.
 - ii) The sum that was claimed (and in due course paid – see paragraph 47 above) was one fiftieth of the N18 billion claimed by Tropics.
 - iii) A “*Schedule of shares purchased not previously advised*” was detailed with particularity, in a schedule attached to the letter, including date, units purchased and price, with a separate reconciliation and summary of stock movement.
 - iv) The claim was the subject of very careful consideration by the Bank. First there was a report by SDS dated 2 February 2009. Then there was a further detailed report from the Financial Control Group, signed by Mr Olonade, dated 16 February 2009. Finally there was the detailed recommendation from the Inspection Group dated 21 May 2009 which, after authorisation by a number of executives, was eventually approved by the Defendant, as set out in paragraph 47 above.
107. This does not constitute any kind of precedent, or example, of the Bank making a late payment similarly to what is alleged to have occurred in relation to the Tropics payments. Indeed Mr Browne-Wilkinson submits that what had recently happened in relation to Summit may have been a catalyst for what he submits to have been a straightforward misappropriation of monies from the Bank into companies controlled or owned by the Defendant.
108. Mr Dada gave his account of what happened in his first witness statement:

“59. There was a number of reasons why we were not unduly concerned about the extent of any backlog in payments by the Bank (at least until late 2008). First, whilst the stock market was on the rise, the value of the shares purchased far exceeded the sums owed by the Bank. Secondly, and just as importantly, our lenders (such as Access Bank) appeared to take the same view and I believe that they were comfortable with the value of

the security they held. Finally our relationship with the Bank was such that there was no real concern that the Bank would refuse to pay any outstanding sums ...

60. ... By late 2008 it ... became apparent that [Tropics] owed Access Bank a very substantial amount of money which, as a result of charges, far exceeded the amount of financing that had been used by Tropics Securities to execute the Bank's share mandates. In light of the declining value of the security, Access Bank understandably started to apply considerable pressure on us for the repayment of outstanding loans ...

...

65. After sending my various reminders to the Bank I had a series of meetings and telephone calls with Mr Adebiyi. I repeatedly chased him for payment. Even though we had agreed many of the amounts outstanding, there was a further delay in receiving payment because of what Mr Adebiyi described as the Bank's "liquidity issues".

66. ... At no stage did I seek or need to involve ... Dr Akingbola in the discussions with the Bank ... Had there been a dispute with the Bank over payment, that would have been a different matter and I might have needed to go to Dr Akingbola in his position as Chairman of Tropics Securities ...

67. Mr Adebiyi agreed in early May 2009 that he would authorise a substantial payment in order to clear a substantial part of the amounts that were due to Access Bank under the financing in place. He asked me to send the Bank a letter from Tropics Securities requesting payment of N10 billion in the first instance, leaving the balance of payments due to Tropics Securities to be processed later."

109. In his fourth witness statement, he stated that he had in fact spoken to the Defendant, after he had received a letter from Access Bank requiring additional security in respect of Tropics' indebtedness to them, and Mr Dada describes how he spoke to the Defendant's wife, who suggested he should talk to the Defendant "*because she in turn believed that [the Defendant] would be able to expedite payment by Intercontinental*". He then says in paragraph 11:

"I think I spoke to [the Defendant] ... on the telephone. I told him about the delay in payment and the pressure we were under from Access Bank. [The Defendant] asked me to speak to Mr Adebiyi again in order to try to expedite payment ... It was clear to me while speaking to [the Defendant] that this was the first time that he knew of the situation and of the delays in payment to Tropics."

110. The Defendant said, in paragraph 117 of his first witness statement, that in about late January 2009 “*Mr Dada informed me that the bank had not paid Tropics Securities some N16 billion in respect of the purchase of shares on its mandate. This had come to a head because of Access Bank’s concerns about a sustained decrease in the value of shares it held as security in respect of finance provided to Tropics Securities*”. He continued in paragraphs 123 and 124 to say that he did not get involved save that “*I spoke with Mr Adebisi, as the individual responsible for the Bank’s share purchase mandate. Even though I was comfortable that the Bank would pay its debts, provided it was satisfied that the amounts outstanding were due, the size of the debt was, on any view, substantial ... Mr Adebisi confirmed that the bank was experiencing certain liquidity problems*” [a somewhat odd statement if made by Mr Adebisi to his Chief Executive] and he “*told Mr Dada to speak to Mr Adebisi in order to persuade the Bank to agree to pay the amounts outstanding as soon as possible and also to pay interest on the amounts that were being charged by Access Bank for the delay.*”
111. At the Part 24 hearing, in the context of the absence of any attempt at the time by Mr Fabunmi to have investigated whether or why the payments were due before causing them to be made, coupled with the absence of any explanation being put forward by the Defendant as to what shares had in fact been purchased, the significant evidence was given, by Mr Dada, in paragraph 6 of his second witness statement, that:

“Documents relating to the purchase of the relevant shares are in Tropics’ offices, to which I still do not have access. Tropics’ offices remain inaccessible as they have been sealed by the Economic and Financial Crimes Commission (“EFCC”) ... Documents on the premises should include correspondence between Tropics and the sellers of the unregistered shares, copies of letters sent to the Bank confirming their purchase, the share certificates and the relevant payment requests.”

The Defendant also said, in his second witness statement at paragraph 142(e), that “*the share certificates for the shares that were purchased by Tropics Securities are in Tropics’ offices.*” In paragraph 62 of my Judgment of 23 March 2011 I concluded that “*the asserted defence put forward as to the £68m Tropics’ payment is very shadowy indeed. I consider the explanations wholly improbable, and unlikely to be supported by any documentation, even after disclosure by the Bank or access to Tropics’ offices*”; however I was persuaded to give conditional leave to defend on the basis that something might, as indicated by Mr Dada and the Defendant, turn up once access to the Tropics’ offices was obtained, as it now has been. I should say immediately that in the event no share certificates of the shares allegedly purchased with the N18 billion were found at the Tropics’ offices once access was obtained and disclosure given of documents which were there.

112. Mr Fabunmi gave a report to the Inspection Group in November 2009, which very much accorded with the evidence which he later gave in his witness statements described above. In a memo dated 24 November 2009 prepared by Mr Jimoh and the Inspection Group for Mr Alabi he recorded that Mr Fabunmi “*claimed that he discussed with ... Mr Adebisi, who was his direct supervisor. He claimed that [Mr Adebisi] gave him a verbal approval to go ahead with the transaction, with the explanation that it was the shares purchased for [the Bank] ... There was no source document to support this transaction aside from the letter written by Tropics and the*

memo from Financial Control requesting the Corporate Treasurer to issue the cheques.” Mr Fabunmi, in his memo in response dated 25 November 2009 said that the Prepayment account had been used to make the payment and that, following the receipt of the letter of request from Tropics, he had had a discussion with Mr Adebisi and “*he thereafter minuted his copy of the letter to me for this transaction following which I wrote the memo in question*” – he said that he was looking for that letter. In paragraph 45 of my Judgment of 23 March I recorded that:

“It is clear Mr Fabunmi does not say that he saw any documents to justify such payments, whether in addition to the N161 billion that he had apparently reconciled on his audit in November 2008, or at all.”

113. Some further documents have now been produced at various stages of this litigation, none of them constituting actual evidence of what shares in the Bank were purchased, but including documents (whose genuineness the Claimant does not accept) amounting to demands from Tropics dating back to August 2008. These are in addition to the slim number of documents, by way of requests for payment from Tropics, which Mr Fabunmi produced to the bank in November 2009.
114. They fall into four categories:
- i) Documents which were exhibited to Mr Fabunmi’s second witness statement which was before me at the summary judgment application (“the Olonade documents”). These were produced by Mr Fabunmi, said to have been provided to him by an unidentified source. In evidence before me, Mr Fabunmi disclosed that this source was his former colleague, and successor as Head of Financial Control, Mr Olonade. Mr Fabunmi explained at this hearing the circumstances in which these documents arose. He said that he had had a green file or folder in which he had kept these letters of demand which ran between 13 May and 30 June, 2009. At the time he was asked by the Defendant for further documents, he had not been able to lay his hands on the green folder, but Mr Olonade in fact had at his request copied its contents, and, it seems, had retained them, and had now made them available to him so that he could produce them in evidence.
 - ii) The next lot of documents is much more substantial (“the Adebisi documents”). They were disclosed by the Defendant in October 2011, well after the summary judgment hearing, as having been left at the security gate of his property on an unspecified date by, or on behalf of, Mr Adebisi, after the Defendant had got in touch with Mr Adebisi by email. These documents included a letter dated 24 November 2008, to which I will refer further below (“the November letter”). That apart, they included not only some letters of demand, but also letters back to July 2008 purporting to confer instructions to purchase units of the Bank’s shares. A significant fact about them is that there is additional handwriting on the documents, which is not present on the Olonade documents or on the next category of documents which I shall describe, which were found in the Tropics’ offices (“the Tropics Office documents”). I shall return to that handwriting below.

- iii) The Tropics Office documents are (save for the absence of handwriting) of the same kind as the Adebisi documents (including the November letter).
 - iv) Finally the fourth category consists of documents recently found in what used to be Mr Fabunmi's office, when it was cleared out, and disclosed by the Claimant. They were contained in a green folder ("the Green Folder documents"). They are of the same kind as, but more numerous than, the Olonade documents. They contain, however, the handwritten annotations, as per the Adebisi documents.
115. One important and material point must immediately be made. It is quite clear, and there was in the event no dispute about it, that the green folder which has now been recently found must be the green folder to which Mr Fabunmi earlier made reference. What is however significant is that the documents which Mr Fabunmi had asked Mr Olonade to copy and keep, and which he himself then exhibited as the Olonade documents, do not have any handwriting on them. The overwhelming inference is that there was no handwriting on the documents when they were copied at the time by Mr Olonade, and that the handwriting must have been added after November 2009, i.e. long after the relevant events between July 2008 and June 2009.
116. As to what the handwriting says, the notations on the various letters are not identical, but in general terms they purport to be handwritten instructions to Mr Fabunmi from Mr Adebisi saying such things as "*please confirm that these are customer's transactions and process in line with management approval*", "*please process, I understand these could be customer-related transactions*", "*please treat, if these are credit customers*" and "*confirm that these are customer transactions before processing payments*".
117. This sets the scene for a somewhat dramatic change of case by Mr Fabunmi and Mr Dada when they gave evidence. I deal first with Mr Fabunmi. Plainly these annotations, if genuine, wholly undermine his case previously given, not only in his witness statements in these proceedings, but in his account to the Inspection Department that he was given oral instructions by Mr Adebisi to pay the money – save to the extent in November 2009 that he had thought that there might be a minuted approval by Mr Adebisi, but clearly by the time he gave evidence in these proceedings he was no longer so asserting (see in terms in paragraph 101 above) when he confirmed (and made no apologies for the fact that), all his instructions were verbal. In any event the annotations are not a minuted approval, but are instructions to investigate.
118. Clearly the ways in which these handwritten notations are inconsistent with Mr Fabunmi's evidence are (i) that Mr Adebisi, on the face of them, appears not to be giving instructions but giving the impression of ignorance, and (ii) in particular he is asking Mr Fabunmi to carry out investigations and checks. Rather than stick to his original evidence and reject what appeared on the handwritten annotations, Mr Fabunmi now changed his account in mid-evidence.
119. He had begun his evidence by repeating, in a way that is particularly material to the evidence of Mr Dada, to which I will turn (Day 22 p35), that he in fact made no checks save that (as he had already said in paragraphs 31 and 36 of his first witness statement) the one check that he did do was "*independently call Mr Dada to check*

that Tropics Securities had the shares in question before each payment request was met.” That apart (and he emphasised that “*doing that was just myself taking another step: I was not even required to do that*”) he made no other check. But when asked about the handwritten annotations in cross-examination he now said that he did take steps to confirm the position, by speaking to SDS, calling Credit Risk and confirming that they were customer transactions (which Mr Adebiyi had asked him to do). He now said, contrary to his previous statement that he had made no checks of any kind, with the exception of the inquiry of Mr Dada, that he had been given instructions from Mr Adebiyi to check and confirm matters, and that he had done so, and obtained relevant confirmations from the different departments.

120. Not only is this completely inconsistent with his earlier evidence, but it is difficult to see how he could have obtained such alleged confirmations, and it sits ill with the fact that he had been unable to find out any information when compiling his original *Estimated Schedule*, referred to in paragraph 103 above. I conclude that Mr Fabunmi was, in changing his case, simply doing his best to assist the Defendant, and avoid the conclusion that the annotations (in any event suspect because of their absence from the Olonade documents) were not in fact there at the time, that he did not in fact receive the instructions to check and confirm, and consequently he did not so check and confirm, but simply did what he was asked (whether by Mr Adebiyi or otherwise), as he had previously explained.
121. As for Mr Dada, as set out in paragraph 111 above, his evidence in his witness statements was that the share certificates would be at Tropics offices. What is more, this would be consistent with the evidence which Mr Fabunmi gave as set out in paragraph 101 above and further repeated in oral evidence on Day 22 – before Mr Dada gave his new evidence on Day 23 – that Mr Dada had confirmed to him at the time that Tropics had the shares.
122. Before I explain how his evidence in this regard changed, I must address the matter of Access Bank. I have referred in paragraph 114(ii) above to the “November 2008 letter”, which first surfaced amongst the Adebiyi documents. It is dated 24 November 2008, marked for the attention of Mr Adebiyi headed “*IB plc special share purchase*” and it reads in material part as follows:

“We refer to the 688,387,955 units of [IB] shares purchased for which payment is still outstanding.

As discussed and agreed, please be informed that due to the pressure from our financier, the share certificates for the above units of shares have been released to Access Bank plc as additional collateral due to our inability to repay the facility taken from them owing to your inability to pay till date.

Kindly expedite the payment of the outstanding sum of N16,012,433,096.48 ... to enable us to regularise our account with the bank.”

It is to be noted that the units are said to be 688,387,958, not the 996,507,000 in the *Estimated Schedule* (paragraph 103 above).

123. I have referred, by reference to the evidence of both Mr Dada and the Defendant in their witness statements, to the fact that they described how Tropics had borrowed money from Access Bank (at that stage an independent bank but which, coincidentally, was three years later to merge with the Claimant in the course of these proceedings), and that Access Bank was beginning to press for payment and suggesting that security that it held would not be sufficient; and this was a motivation for Mr Dada pressing IB for the substantial sum he said Tropics was owed in respect of the alleged July/August 2008 share purchases. In his first witness statement (paragraphs 50-55), Mr Dada explained that Access Bank was a major source of finance for Tropics, providing finance not only to Tropics Securities but also indirectly to other companies within the Tropics Group: hence, he explained, the N10 billion transfer on 11 May 2009 was split into three parts, payable to the three different companies (see paragraph 99(i) above). He described how Access Bank took security for its lending to Tropics by way of Tropics handing over physical share certificates which it had bought and *“the intention was that as and when we made payment to offset loans from Access Bank, or the bank made payments on our behalf on respect of its share purchase mandates, the shares would be transferred back to our CSCS position in our name and held to the Bank’s order. My understanding is that the shares which were pledged to Access Bank are still with that bank’s custodian, despite the fact that some of the loans have been repaid by Tropics Securities”*. At paragraph 10 of his second witness statement Mr Dada said that *“borrowing from Access Bank was used to fund the acquisition of shares on the Bank’s instructions”*.
124. It was in that same second witness statement at paragraph 6 that Mr Dada, like the Defendant, made the statement that the share certificates said to have been purchased with the N18 billion (and in respect of which the N18 billion had been ‘repaid’ in May/June 2009), would be at the Tropics offices.
125. When he came to give evidence in chief on Day 23, Mr Dada simply said that he wanted to correct this paragraph 6 so as to say *“What I meant by this are copies of the share certificates”*. No further explanation than this was given. It was only in the course of his cross-examination that he explained the change, which was required, he said, *“because I know the certificates, the original physical share certificates, could not have been inside the Tropics offices, when I know they have been handed over to Access Bank”*. This was fairly extraordinary, because the significance of that was, of course, not simply that he now wished to say that all that he had meant was that *“copies”* of the certificates were at the Tropics offices, but that the share certificates, which had indeed not been found – nor copies of them – when the Tropics offices were unsealed, had never been there, because they had been transferred to Access Bank. None of this was explained prior to the 23rd day of the hearing, and reliance was then sought to be placed upon the *“November letter”*, to which I shall now refer further. However, no evidence was given by him or at all as to when, where and with whom what is said to have occurred according to the November letter (quoted in paragraph 122 above) was *“discussed and agreed”*.
126. The whole case as to this claim then appeared to revolve around the suggestion that the 688,387,955 units referred to in the November letter were the units purchased in July/August 2008, subsequently reimbursed by the Bank via Mr Fabunmi. Reference was made to a Schedule headed up *“Tropics Group – shares pledged as collateral –*

as of close of business January 15 2009". I set out this "Tropics Schedule" below, having numbered the items 1 to 17:

THE TROPICS SCHEDULE

TROPICS GROUP – SHARES PLEDGED AS COLLATERAL – AS AT CLOSE OF BUSINESS JANUARY 15, 2009					
Bank	Name	Certificate no	Units	Price	Value of Shares
[1] Intercontinental	Wole Lekan Seun	898236	48,216,400	9.61	463,359,604
[2] Intercontinental	Seun Wole Kinyemi	898241	38,935,200	9.61	374,167,272
[3] Intercontinental	Kole Oyinlola	898142	32,135,500	9.61	308,822,155
[4] Intercontinental	Peter Akingbola	371587	5,866,372	9.61	56,375,835
[5] Intercontinental	Tropics Finance	1485727	41,699,999	9.61	179,309,996
[6] Fidelity Bank	Erastus Akingbola	3847	352,279,708	4.3	1,514,802,744
Newest Shares					
[7] Intercontinental	Akintonye Olalekan Paul	908859	226,568,141	9.61	2,177,319,835
[8] Intercontinental	Oluwafemi Akintoye	908853	96,887,086	9.61	931,084,896
[9] Intercontinental	Orejobi Idowu Akinyemi	908855	34,565,453	9.61	332,174,003
[10] Intercontinental	Olaiya Babatope Bankole	908799	33,911,500	9.61	325,889,515
[11] Intercontinental	Morenikeji Christianah	CSCS	50,000,000	9.61	480,500,000
[12] Intercontinental	Morenikeji Eludoyin	CSCS	50,000,000	9.61	480,500,000
[13] Intercontinental	Erastus Akingbola	148518	197,383,334	9.61	1,896,853,840
[14] Intercontinental	Akintonye Paul	148485	50,328,571	9.61	483,657,567
[15] Intercontinental	Oluwafemi Akintoye	898060	41,649,906	9.61	400,255,597
[16] Intercontinental	Orejobi Idowu Akinyemi	898061	42,895,000	9.61	412,220,950
[17] Intercontinental	Olaiya Babatope Bankole	898059	42,295,198	9.61	406,456,853
				Units	Value (N)
			Intercontinental B	1,033,337,660	9,930,374,913
			Fidelity Bank	352,279,708	1,514,802,744
			TOTAL VALUE		11,445,177,657
			Total Exposure		15,075,781,097
			Coverage		76%

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127. Mr Dada said in cross-examination that it was some of those shares that constituted the units which had been lodged with Access Bank, according to him as promised/threatened by the November letter. Mr Chaisty put in re-examination to Mr Dada, and he accepted, that by totalling the items 1, 2, 3, 7, 8, 9, 10 and 14, 15, 16 and 17 in the Tropics Schedule, that comes to the figure of 688,387,955, which appears in the November letter which formed part of the Adebisi documents produced in October 2011. Thus, said Mr Chaisty, by reference to that evidence, Mr Dada is now right when he says that the share certificates were never in the Tropics offices, but were pledged to Access Bank as from November 2008, a matter seemingly unknown to the Defendant, who gave the evidence referred to in paragraph 111 above.

128. Before examining the viability of this argument, it is necessary to explore the history of the shares listed in the Schedule which I have set out above, and the history of Tropics' indebtedness:
- i) Documents disclosed in the litigation show that the loan facilities granted by Access to various companies in the Tropics Group date back to 2006, such that each of four companies (Bankinson, Tropics Properties, Tropics Securities and Octopus Nigeria Ltd) had a facility of N4 billion, amounting to N16 billion in all. That borrowing was secured by a personal guarantee from the First Defendant (as controller of the Tropics Group) and secured by shares of the Defendant, largely but not wholly shares in IB. The facility was to enable the various Tropics companies to take advantage of investment opportunities, but it is clear from the Tropics Schedule set out above that by January 2009 the total exposure was something over N15 billion, while the value of the shares as pledged was only N11.4 billion. Hence, the Claimant submits, the reason why it was necessary for Tropics (and the Defendant as guarantor) to obtain some money for the purpose of reimbursement of Access – and Mr Dada accepts that the N10 billion referred to in paragraph 99(i) above was and was used for that purpose.
 - ii) As to the history of the shares, it is plain that numbers 8, 9, 10 and 11 are listed in the Tropics IB Schedule referred to in paragraph 34 above as being “*kept with Dangote*”: namely part of the 435 million units of shares which, as appears in paragraph 34 above, the Defendant purchased with the moneys he borrowed from Mr Dangote. Those shares in the summary are all marked with the date 20/08/07, which is when they were acquired, and the certificate numbers are identical to those on the Tropics Schedule set out above. They were all in pseudonyms used by the Defendant. The first three numbered items in the Tropics Schedule also appear in the Tropics IB Schedule (with the same certificate numbers) and with the date recorded 24/08/07. The other four (numbers 7-10) appear in a letter dated 30 July 2008 from Mr Dada and another, on behalf of Tropics sent to Access Bank, by which they add those four share certificates in IB to the security held by Access. It is accompanied by a letter of 31 July 2008 signed, under the name of ‘Akintoye Olalekan Paul’, by the Defendant.
129. The Defendant gave no evidence as to all this, nor was he cross-examined about it, because it was not raised until Mr Dada gave his evidence, indeed really effectively his evidence in re-examination, on the last day of the evidence in this hearing. The explanation is thus left to Mr Dada, who says as follows. The shares listed in the Tropics Schedule had been owned (at any rate as to the eleven identified) not or not primarily by the Defendant but by various unidentified politicians, in whose names they were held, and on whose behalf the Defendant had (as in the case of Akintoye Olalekan Paul) signing rights. What happened was that these politicians, whose shares were so pledged to Access Bank, wanted to sell their shares in July/August 2008, and did so to (unidentified) customers of the Bank. Effectively the Bank bought the shares from the politicians on behalf of the customers. Tropics laid out the moneys on the Bank's behalf, and were repaid by the Bank, but the shares remained pledged to Access Bank, still in the names of the vendors/politicians. As for the fact that the four lots of shares referred to in paragraph 128(ii) above were pledged (still in the names

of the vendors) on 30 July 2008 relating to a total of 391,952,180 units, when by that date, according to the purported notification letters contained in the Adebisi documents, only 116,395,653 units had been bought (as “notified” in a letter of 16 July 2008), Mr Dada’s answer was that the shares had been pledged before they were bought/sold. At Day 23 p108 he said *“I had the share certificates already with me, based on my agreement with the sellers. So the sellers had already agreed to sell those certificates ... It was only the issue of price that we are waiting for, so, by 30 July 2008, I had certificates in my possession well in the region of about 500 million. So it was – once I am able to agree the price for the sellers, then we will go ahead and give the bank, you know, the contract notes to specify, you know, the number of shares that at least we are ok with.”*

130. I am afraid to say, notwithstanding the pertinacity of Mr Chaisty, that this account (in paragraphs 125 to 129 above) cannot be described as anything other than a load of baloney.
131. The following is plain:
- i) The shares in the Tropics Schedule were lodged with Access Bank as security for Tropics’ borrowing, and had been for some considerable time, certainly before July/August 2008, save for those which were additionally then added (as referred to in paragraph 128(ii) above). They either belonged to the Defendant (many purchased with the moneys he had borrowed from Dangote) using the many aliases which can be seen in the documents, or possibly were held in part on behalf of others (whether or not politicians) on whose behalf and, in particular, in whose names or aliases, the Defendant was able/entitled to sign documents.
 - ii) There is no sign whatever, nor any truth in, the suggestion that these shares were in July/August 2008 sold to anyone.
 - iii) If they were sold, then – as Mr Dada said (at Day 23, pp54-55), after I had misunderstood him to have been saying that the names in the Tropics Schedule were the names of those who had allegedly bought the shares – the Bank bought them:

“What I am saying is that those who sold those shares ... are the politicians ... The Bank bought the shares ... When the Bank bought the shares, we took the certificates from the sellers, which are the politicians. However, those certificates were still in the physical form, they had not been dematerialised. So we – at this point they were not transferred to the Bank. They were still in the names of the sellers.”
 - iv) If they were ‘sold’ by the politicians/aliases to the Bank, then the Defendant would have known about it. He gave no evidence whatever of any of this.
 - v) The shares remained in the names of the politicians/aliases/the Defendant and continued to be charged to Access Bank in, and indeed after, June 2009, as is clear from the renewal of the security by further facility letters dated 30 June

and 3 July continuing the lien on the same shares as are set out in the Tropics Schedule. Thus the “buyers”, whose names never went on the certificates, which remained in the same names, never acquired the shares (nor did the Bank who bought them or – though this veneer does not seem to have been continued – loaned monies to them for the purpose of such purchase); nor do they see the ‘benefit’ of these shares, either when they were ‘purchased’ in July/August 2008 by Tropics, acting on Mr Adebisi’s instructions, or when the money which Tropics had allegedly laid out on their behalf in July/August 2008 was ‘repaid’ by the Bank to Tropics in May/June 2009.

- vi) There is no conceivable reason, even in accord with the Bank’s Strategy, for its having ‘purchased’ shares in itself (whether on behalf of unidentified loan customers or otherwise) from the ‘politicians’ in July/August 2008, nor for Mr Adebisi (who according to the handwritten annotations was asking Mr Fabunmi for information in May/June 2009, and had made no mention of these additional shares in the box in his November Memo) giving any instructions for their purchase.
 - vii) If anyone did buy the shares from the politicians/aliases, there is no sign of any payment or arrangements for payment or transfer, nor in particular any exposition as to how such purchasers could have acquiesced or did acquiesce in the unusual arrangement, referred to by Mr Dada, as set out in paragraph 129 above, for the shares to be pledged even prior to their purchase.
 - viii) It is inconceivable that Tropics borrowed very substantial sums from Access just in order to do a favour for the Bank in laying out in July/August 2008 N16 billion upon shares being purchased for the Bank (or its unidentified customers). This was, as set out in paragraph 105 above, twice the amount it had ever previously laid out for shares in the box on the instructions of the Bank, in respect of which it had always been regularly paid.
 - ix) I do not accept that the November letter was sent at the time, nor that anything was *discussed and agreed* at the time, as there stated. The suggestion that shares now identified by reference to the Tropics Schedule are in fact the ‘missing’ share certificates is a very belated and untrue afterthought.
132. I do not need to reach any conclusion as to how and when the Adebisi documents were produced, or the Tropics Office documents or the Green Folder documents were produced or positioned, but I am satisfied that they do not reflect the true or contemporaneous reality. The handwritten annotations were not on the documents which Mr Fabunmi had at the time, and later passed to Mr Olonade, and Mr Fabunmi did not act, as he would have done at the time had there been such annotations, and as he sought by his untrue change of evidence now to say he did. In fact - as was perfectly understandable in his position (and as he told the Inspection Department in November 2009, ascribing the instructions to Mr Adebisi) – he simply did what he was told. The November letter was not in the offices of the Bank either at the time it was purportedly written or at the time of the Inspection Department’s investigation in November 2009 and its discussions with Mr Fabunmi. Had there been any truth in the account (paragraphs 125 to 129) analysed at length above, Mr Dada would not have waited until Day 23 of the hearing to ‘correct’ his earlier statements and to give his new account, at a time when the Defendant had already given his evidence on the

basis that both he and Mr Dada had said that the certificates would be in the Tropics office.

133. I am satisfied beyond any doubt that the N16 billion was extracted from the Bank in May/June 2009 without lawful justification, and was paid to Tropics, not by way of reimbursement in respect of the purchase of shares, but to assist Tropics with its substantial indebtedness, much if not all of which was guaranteed by the Defendant. I am also satisfied that both the two witnesses called by the Defendant on his behalf in respect of this issue changed their evidence in a way that can only have been intended to assist the Defendant: certainly Mr Fabunmi must have weakened his own position in relation to any proceedings in Nigeria by now asserting that instead of simply doing what he was told he checked the uncheckable.
134. I must turn therefore to address the question as to whether the Defendant is liable in respect of such misappropriation. Mr Chaisty points out that at the time of the investigation in November 2009 no-one is recorded as having pointed the finger at the Defendant – if anything it was pointed at Mr Fabunmi and through him Mr Adebisi. He also points to the evidence of Mr Jimoh and Mr Aro in which neither of them were prepared to make positive statements against the Defendant. But I have to reach my conclusion in the light of all the evidence I have considered.
135. I have not reached my conclusions on the basis of the absence of any documents of itself. It is possible that there are peripheral areas in which there could have been further disclosure by the Bank or by Access Bank, for which the Claimant is now also responsible, and that some documents may have disappeared from the Tropics premises, but I am satisfied that I can reach sound conclusions on the basis of what I have seen, and that nothing that I have not seen but which may exist affects the clear conclusions to which I have come. Equally I do not base my conclusions in respect of the Defendant on either of the following:
- i) that a number of documents, including the letters of request/demand from Tropics on the basis of which Mr Fabunmi acted, were addressed to the Group Chief Executive. I am satisfied that letters, including those so addressed, did not, unless marked for his personal attention, which none of them did, in fact arrive with him.
 - ii) simply that he was both a director, and Chief Executive, of the Bank and a director of the Tropics group. On the other hand there were two enlightening moments during his evidence:
 - a) On Day 15 p43 when, in giving evidence in relation to Tropics' alleged dealings with regard to the shares pledged to Access, he referred to Tropics – rather than the Bank – as “we”.
 - b) On Day 18 at p189 he described how he said Mr Adebisi had come to him in May 2009 to tell him that he had found a way to pay Tropics and he said that Mr Adebisi “*came to tell me about his success ... telling me what he has been able to arrange, because it was to him like financial engineering, that he's been able to solve one of his problems without money leaving the bank.*” It seems odd that paying £68m to

Tropics should be regarded as a ‘*success*’ if looked at from the Bank’s point of view.

136. On the one hand Mr Chaisty submits that I could not find that the Defendant is in breach of trust or responsible for misappropriation on the basis of the account of short conversations between him and Mr Adebisi and him and Mr Dada, such as is described in the evidence set out in paragraph 110 above. On the other hand, on the basis of the new account given by Mr Dada in his oral evidence, which I have set out at some length above, the Defendant must have been involved in the alleged sales by the alleged politicians for whom he allegedly had signing rights.
137. I do not however base my conclusions on either of those accounts. I reject both. The reality is that the Defendant understood the urgent need (against the admitted background of the Bank’s “*liquidity problems*”) of getting monies out of the Bank while they were still there, and over to Tropics, to relieve the indebtedness of the Tropics Group, which he had guaranteed. I have no doubt at all that he was central to that decision, and that, even if the instructions to Mr Fabunmi came from Mr Adebisi, and resulted from discussions between Mr Adebisi and Mr Dada, they emanated from him and were to his benefit, and the money went to alleviate the indebtedness of Tropics, and hence his own. Paragraph 5 of the Particulars of Claim, which I set out in paragraph 4(ii) above, is proved.
138. I should say that if, contrary to my conclusions, the N16 million was indeed to reimburse the Tropics group (including N2 billion-worth of alleged interest) in respect of the purchase of shares in the Bank, for which Tropics had laid out on their behalf nine months earlier, then those were payments in breach of s160 of CAMA and fall to be added to the sums found due in respect of the Unlawful Share Purchase Claims, for which the Defendant is liable as I concluded above.

The Fuglers Payments

139. The first Fuglers payment was made from the IB Deutsche Bank Nostro account, sent to the London Client Account of Fuglers in the sum of £8,540,134.58 on 11 March 2009, and it was expended on the purchase of a number of properties in the names of companies within the Defendant’s Lifeboat Settlement. There is a considerable degree of common ground:
- i) The monies were required by the Defendant in London urgently because, having put down deposits on a number of properties, he had now been served with completion notices requiring the final purchase monies to be paid by a very imminent deadline.
 - ii) The Defendant did not have sufficient monies in his account with the Bank to meet those payments.
 - iii) As he himself said, in paragraph 36 of his first witness statement, he “*did consider, but quickly discounted, the possibility of applying for a loan from the Bank*” (a procedure which, in any event, would have needed careful dealing with procedures in the light of the inhibition upon loans to directors in s18 of BOFIA): “*I knew that an application for a loan from any large Nigerian bank*

... could take several weeks to complete, which would be too long for my purposes”.

- iv) He made arrangements for the Bank to make the payments, through Mrs Ayinde, who gave evidence for the Defendant, and then set out to find a way to obtain the funds.

140. This is then what occurred:

- i) He contacted Dr Obieri, his Chairman and co-Director at the Bank, who was also Chairman of a finance company called Regal Investment Company Ltd (“Regal”). This was done on 10 March. Regal was prepared to assist, but, as I am satisfied he knew, did not have the money itself.
- ii) Dr Obieri (from whom a hearsay statement was produced by the Defendant) then wrote a letter of the same date (10 March) to Mr Thomas, the Managing Director of ICML, the subsidiary of the Bank of which Dr Obieri was Chairman and the Defendant Chief Executive. The letter was headed “*Application for N3.2 billion placement line*”, and Dr Obieri wrote to apply for such a “*placement line*”, telling Mr Thomas that “*Regal Investment is an investment outfit that deals in corporate and individual funds and portfolio management.*” Regal had not previously done any business with ICML, but of course Mr Thomas knew Dr Obieri, the Chairman of his parent company. Dr Obieri included a copy of Regal’s Certificate of Incorporation and a copy of Regal’s Memorandum and Articles of Association. He did not include any accounts. Had Mr Thomas done a company search he would have discovered that no annual returns for Regal had been filed in the years 2005-6 or 2008.
- iii) ICML also did not have sufficient funds. Had he been asked for a ‘loan’, which this of course was, given that Regal was plainly not the kind of ‘financial institution’ to which one could contemplate making a ‘placement’, then he would have had to follow a very strict procedure, but he says that, as this was a ‘placement’, he did not need to do so. In any event, he carried out no due diligence, sought out no accounts, followed no procedure, did not seek approval from the Board of ICML and required no security and pushed through the transaction within the day. He agreed to make the ‘placement’, but, in order to do so, he had to obtain funds from – ICML’s parent company, the Bank. Mr Thomas wrote an internal memo, addressed to Mr Adebisi, dated 11 March 2009, requesting “*that our existing placement line of N2 billion be increased to N5.5 billion. This has become necessary as a result of the growing portfolio of the company’s business transactions in recent times. We propose that the placement would be on a 180 days tenure with option of rollover*”. Mr Thomas said in evidence that “*once in a while*” he did ask for extra funds from the Bank. What of course he did not say in the memo was what the purpose of the loan was, which plainly had nothing materially to do with any alleged “*growing portfolio of the company’s business transactions in recent times*”, but everything to do with the proposed loan to Regal. All in one day, on 11 March 2009, a rash of handwritten approvals appeared on the internal memo which must have been passed from hand to hand within the Bank, including Mr Adebisi and, still on 11 March, the Defendant himself. Once again, apart from those approvals, no procedures were followed. The

Defendant, who originally thought he may have been out of the office on 11 March, accepted that he had indeed signed the approval – but he says he did not realise it was for the purpose of the advance to him which he so desperately needed. I do not accept that.

141. In the event, notwithstanding the extraordinary speed with which these transactions – Defendant's/Regal/ICML/IB – were put into place, the monies were not available to advance from the Bank to ICML to Regal until 13 March. By that time, as set out above, the monies had gone out of the Bank's account and off to buy the Defendant's properties in London.
142. There followed over the ensuing months a series of intercompany transactions and transfers, which Mr Browne-Wilkinson submits were intended to make it look as though the monies were repaid by ICML to the Bank, and which he asserts to be part of a cover up. But I conclude that I do not need to reach any conclusion as to whether this was all part of a cover up, particularly one in which the Defendant played any part: nor indeed do I have to express a view as to whether strictly in law the transactions which I have described above should be regarded as shams. Certainly Mr Thomas, who appeared to me to be a meticulous individual, albeit I conclude one totally under the control of the Defendant, did not act meticulously in terms of any kind of due diligence, given that he effectively gave away a massive sum to Regal (which Regal has never repaid to ICML) simply on the say-so, as he asserts, of Dr Obieri, and no proper procedures were carried out in relation to any of the above transactions. Even if there could have been in an appropriate case some excuse by virtue of an alleged need for matters to be dealt with quickly, that very explanation was not overtly given at the time, whereas I am satisfied that in fact it was all driven by the Defendant's urgent need for the monies before completion. Mr Chaisty was driven to be critical of Mr Thomas as *mistakenly lax*. I simply conclude that he was doing what he was told.
143. But I can simply rest my decision on the basis that in fact the Bank's monies were paid out to buy the properties for the Defendant's companies. As it happens I am satisfied that they were never repaid, but in any event they were caused to be paid out by the Defendant in breach of duty and consequently (see paragraph 10 above) of trust, and the Claimant has a tracing claim into the properties or their proceeds of sale.
144. I am satisfied that the Claimant is entitled to trace into the properties acquired with the Fuglers 1 payment. There were in fact four properties, of which the total purchase prices were £11.5m. As a result of the Freezing Order, three of the properties have now been sold and £9m has been recovered from the proceeds of sale and paid to ICML, for which the Claimant will give credit. One property remains outstanding, still on the market.
145. There has been no issue raised between the parties as to the fact that simple interest on the Fuglers 1 payment up to 21 May 2012 (taking into account a part payment some four days earlier) amounts to £2,178,523.09. A further calculation will need to be done until the date of judgment, and the interest figure so calculated added to the £8,540,134.58, in relation to which I am prepared to make the appropriate declaration. The Claimant however seeks, in addition, such sum once the fourth property is sold as will entitle it to an appropriate percentage (said to be 74.26%) of the sale prices of all four properties). As I indicated in the course of the hearing, I conclude that the

Claimant cannot have both capital appreciation and interest, and that it must elect between the two. I will hear Counsel on the election to be made, and the appropriate form of order.

Fuglers 2

146. The sum of £1,300,000 was transferred from the Claimant's Nostro account on 13 July 2009 again to the Client account of Fuglers LLP, and was used to purchase properties in the name of the Fifth and Sixth Defendants, companies in another of the Defendant's settlements, the Octopus Trust.
147. As indicated in paragraph 4(iii) above, the Claimant accepted that payment made by Tropics in or about May 2009 "*repaid*" the Bank in respect of the Fuglers 2 transfer, while noting that such payment was in fact the proceeds of the transfers on 19 May 2009 from the Bank to Tropics, claimed as part of the Tropics Payments Claim (in fact those set out in paragraph 99(iv) above). Consequently Mr Browne-Wilkinson has accepted, both at the summary judgment application and at trial before me, that, if the Claimant recovers in full in respect of the Tropics Payments Claim, then it would be double recovery if it sought payment in respect of Fuglers 2. It would only have been if the Claimant did not succeed in that regard that it would have sought to argue that (i) similarly to the Fuglers 1 case, the monies were paid out by the Bank and were recoverable in equity and (ii) the Claimant did not need to give credit for any payments by Tropics. In the event I have found for the Claimant in respect of the Tropics Payments Claim as above, and there is no need to grapple with the interesting questions of law and of fact (by reference to whether Rockson Engineering advanced money to the Bank before or after the Bank advanced money to the Claimant) or otherwise. I therefore need to make no order in respect of this claim.

Conclusion

148. I return to the question I raised in paragraph 97 above with regard to the Court's power to grant relief. I have studied the section, and have, so far as English authorities are concerned, considered in particular **Barings plc v Coopers & Lybrand** [2003] Lloyd's Rep IR 556 at 1128-1134. I cannot see that, in the light of the findings I have made, the Defendant can be said to have acted, either in relation to the first and second heads of claim, to which alone this issue is directed, "*honestly and reasonably*": certainly not so far as the Tropics Payments Claim is concerned, and as for his Strategy for the company to buy its own shares into the box, quite apart from being contrary to Nigerian law, it was simply wrong-headed, and was plainly a substantial contributing factor to the collapse of the Bank.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2014

BETWEEN:

ACCESS BANK PLC

Plaintiff

- and -

ERASTUS BANKOLE OLADIPO AKINGBOLA

Defendant

Exhibit 2

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

COMMERCIAL COURT



Claim No 2009 Folio 1680

The Honourable Mr Justice Burton

13 September 2012

ORDER MADE IN PUBLIC

BETWEEN

ACCESS BANK PLC

Claimant

and

- (1) ERASTUS BANKOLE OLADIPO AKINGBOLA**
- (2) KAYMAN COMPANY LIMITED**
- (3) VERNDALE PROPERTIES LIMITED**
- (4) JASMINE PROPERTIES LIMITED**
- (5) CAELUM LIMITED**
- (6) SANAMI LIMITED**

Defendants

ORDER

UPON the trial of this action

AND UPON the handing down of reserved Judgment on 31 July 2012

AND UPON the Freezing Injunction granted by Mr Justice Nicol on 23 December 2009, continued by Consent Order dated 14 January 2010, varied by Mr Justice Blair by Order dated 25 January 2010, and continued until Judgment or further Order by Order of Mr Justice Christopher Clarke dated 12 February 2010 ("the Freezing Injunction")

AND UPON the Order dated 31 July 2012 by which matters consequential on the Judgment were to be determined at a further hearing, by which the First Defendant's time for seeking permission to appeal was extended, and by which the Freezing Injunction in these proceedings was continued until any further Order at the hearing to be listed

AND UPON the listing of the hearing for consequential matters to be heard on 13 September 2012

AND UPON the Claimant's application made by Application Notice dated 11 September 2012 for continuation of the Freezing Injunction against the First Defendant in these proceedings post-judgment

AND UPON hearing Leading and Junior Counsel for the Claimant, Leading Counsel for the First Defendant, and Leading Counsel for the Second to Fourth Defendants

IT IS ORDERED THAT:

1. Judgment be entered for the Claimant against the First Defendant.
2. The First Defendant's Counterclaim be dismissed.
3. In respect of the Unlawful Share Purchase Claim, the First Defendant do forthwith pay to the Claimant the sum of N144,964,975,408 plus interest at the rate of 8 percent per annum from 1 September 2008 to 13 September 2012 in the amount of N46,833,616,164.69, a total of N191,798,591,572.69.
4. In respect of the Tropics Payments Claim, the First Defendant do forthwith pay to the Claimant the sum of N16,184,499,999 plus interest at the rate of 8 percent per annum from the date of each of the Tropics Payments respectively to 13 September 2012 in the amount of N4,310,997,588.82, a total of N20,495,497,587.82.
5. Interest shall accrue at the Judgments Act rate of 8 percent per annum on the sums due under paragraphs 3 and 4 above from 14 September 2012 until payment.
6. In respect of the First Fuglers Payment Claim, it is declared that the First Defendant in breach of trust and breach of fiduciary duty caused the First Fuglers Payment to be paid out from the Claimant's moneys and that the Claimant has a proprietary tracing claim accordingly.
7. It is declared and there be a declaration that the Claimant is entitled to and has a 74.26% beneficial and proprietary interest in Flats 17, 18, 19 and 20 Embassy Court, London, NW8 ("the Properties"), and in (in respect of any of the Properties already sold) any proceeds of sale of the Properties and in (subject to paragraph 8 below) any income derived from the Properties, such beneficial and proprietary interest including the proportionate right to any proceeds of sale including capital appreciation and any interest earned on the proceeds of sale and from 31 July 2012 any rents from Flat 19. It is further declared that the Claimant is entitled to payment or transfer to it of its property and funds as declared in this paragraph and there be judgment against the Second to Fourth Defendants accordingly.
8. In respect of any rental income from the Properties prior to 31 July 2012, an issue be reserved between the Claimant and the Second to Fourth Defendants as to whether the Claimant is entitled to a proportionate share of any rental income from the period from the First Fuglers Payment to 31 July 2012; and the costs in respect of this reserved issue be reserved to any hearing of the issue (such hearing to be reserved to Burton J). The detailed assessment of costs payable by the First Defendant (as ordered below) can proceed notwithstanding anything in this paragraph.

9. In respect of paragraph 7 above, the Claimant shall give credit for the £9 million which the Claimant has received to date from the Lifeboat Settlement pursuant to the Undertaking dated 4 March 2011.
10. There be payment out of Court to the Claimant of all funds in Court in this action (in Court Funds Office account 23383877C), amounting to £236,837.94 as at 13 April 2012 plus any further interest accrued, such payment out to be made as directed in the Payment Schedule hereto and to be made to the client account of the Claimant's solicitors (the account details of which are set out in the attached Payment Schedule).
11. The Claimant do give credit for the money in Court payable to it under paragraph 10 above against the First Defendant's liabilities under paragraph 4 above.
12. The Freezing Injunction be continued until satisfaction in full of the First Defendant's liabilities in this Order or further Order. The terms of the Freezing Injunction as continued are attached to and form part of this Order.
13. The Claimant be released from what was undertaking 2 in Schedule B to the Freezing Injunction as at 25 January 2010 and no fortification or security shall be required from the Claimant in respect of the Freezing Injunction.
14. The sum of £100,000 held by the Claimant's solicitors in fortification of the Claimant's undertaking in damages (under what was undertaking 2 in Schedule B to the Freezing Injunction as at 25 January 2010) be permitted to be released to the Claimant.
15. The Claimant be released from what was undertaking 9 in Schedule B to the Freezing Injunction as at 25 January 2010 and the Claimant be at liberty to take such enforcement measures or seek such charges or security as it considers appropriate.
16. The First Defendant do by 4pm on 26 October 2012 file and serve a witness statement verified by a Statement of Truth signed by the First Defendant setting out a monthly breakdown of (a) his living expenses by category from January 2011 to date and (b) his legal fees incurred in Nigeria from December 2009 to date, in each case with full details as to the source of funds with which he has met his liabilities including details of when payments were made, to whom, from whom, to and from which accounts and in what amounts, with supporting documentary evidence. This paragraph 16 is ordered on the basis and condition that the Claimant be not permitted to make an application for contempt against the First Defendant in respect of breaches of the Freezing Injunction occurring on or before the date on which the statement required by this paragraph is signed based on any information obtained from the Order made in this paragraph alone.
17. In respect of compliance with paragraph 16 above, the First Defendant is given a Penal Warning that if he disobeys this Order, he may be held to be in contempt of Court and may be imprisoned, fined or have his assets seized. If the provision of any information or documents is likely to incriminate the First Defendant, he may

be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information or documents. Wrongful refusal to provide the information or documents is contempt of Court and may render the First Defendant liable to be imprisoned, fined or have his assets seized.

18. The First Defendant's oral application for permission to appeal against paragraph 16 above be refused. Pursuant to CPR r 40.2(4) and paragraph 4.3(A)(1) of the Practice Direction to Part 52 of the CPR, it is stated that paragraph 16 above is not a final decision for the purposes of Article 1 of the Access to Justice Act 1999 (Destination of Appeals) Order 2000; permission to appeal is required for the Claimant to appeal this Order; and the appropriate appeal court to which any further application for permission may be made is the Court of Appeal. The First Defendant's application for a stay of paragraph 16 above be dismissed.
19. The First Defendant do pay the Claimant's costs of the proceedings (including any costs previously reserved and unresolved heretofore and including the Claimant's costs of and in relation to the First Defendant's application to set aside the Freezing Injunction which application was not pursued by the First Defendant after the Court's Order of 4 April 2011). The Claimant's costs of the proceedings payable by the First Defendant shall, if not agreed, be subject to detailed assessment and be assessed as to 40% of the action on the indemnity basis and 60% on the standard basis.
20. The First Defendant do by 26 September 2012 pay £1.8 million on account of the costs ordered under paragraph 19 above, such payment to be made to the Claimant's solicitors' client account.
21. On the First Defendant's application for permission to appeal, permission to appeal is refused.
22. Pursuant to CPR r 40.2(4) and paragraph 4.3(A)(1) of the Practice Direction to Part 52 of the CPR (and subject to paragraph 18 above), it is stated that this Order is a final decision for the purposes of Article 1 of the Access to Justice Act 1999 (Destination of Appeals) Order 2000; permission to appeal is required for the Claimant to appeal this Order; and the appropriate appeal court to which any further application for permission may be made is the Court of Appeal.
23. The First Defendant's application for a stay of this Order be dismissed.
24. This Order shall be properly served if served on Peters & Peters LLP, the solicitors for the First Defendant, and there shall be no requirement for personal service on the First Defendant.

Freezing Injunction

IN THE HIGH COURT OF JUSTICE

Before The Honourable Mr Justice Burton

QUEEN'S BENCH DIVISION

Freezing Injunction continued on

COMMERCIAL COURT

13 September 2012

Claim No. 2009 Folio 1680
Dated 13 September 2012

BETWEEN

ACCESS BANK PLC

Applicant/Claimant

and

ERASTUS BANKOLE OLADIPO AKINGBOLA

Respondent/Defendant

PENAL NOTICE

IF YOU, ERASTUS BANKOLE OLADIPO AKINGBOLA, DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

THIS ORDER

1. This is a Freezing Injunction made against Erastus Bankole Oladipo Akingbola ("the Respondent") on 23 December 2009 by Mr Justice Nicol (sitting in vacation in the Queen's Bench Division Interim Applications Court) on the application of Intercontinental Bank Plc which has since become Access Bank Plc ("the Applicant") and as varied by Mr Justice Blair on 25 January 2010 and continued by Mr Justice Burton on 13 September 2012 following entry of Judgment against the Respondent on 31 July 2012.

FREEZING INJUNCTION

4. Until satisfaction in full of the Respondent's liabilities under the Court's Order of 13 September 2012 or further Order of the Court, the Respondent must not-
 - (1) remove from England and Wales any of his assets which are in England and Wales up to the value of £83,000,000 (eighty-three million pounds); or
 - (2) in any way dispose of, deal with or diminish the value of any of his assets whether they are in or outside England and Wales up to the same value.
5. Paragraph 4 applies to all the Respondent's assets whether or not they are in his own name, whether they are solely or jointly owned, whether the Respondent is interested in them legally, beneficially or otherwise and whether they are legally or beneficially held, owned or controlled by the Respondent, directly or indirectly, including in or through a trust, corporation or other persons (physical or legal), including without limitation, directly or indirectly, his wife Dr Mrs Antonia Tolulope Akingbola. For the purpose of this Order the Respondent's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.
6. This prohibition includes the following assets in particular-
 - (a) the traceable proceeds of the £8,540,134.58 transferred to Fuglers Solicitors client account on or about 12 March 2009;
 - (b) any money held in an account of Fuglers Solicitors on behalf of the Respondent or controlled by the Respondent;
 - (c) the Respondent's interest (if any) in the property known as 26 Chester Terrace, London, NW1 4NB or the net sale money after payment of any mortgages if it has been sold;
 - (d) the Respondent's interest (if any) in the property known as 2 Cambridge Gate, Regent's Park, London NW1 4JW, or the net sale money after payment of any mortgages if it has been sold;

- (c) the Respondent's interest (if any) in the property known as Flat 19 Embassy Court, Wellington Road, London NW8 9SX or the net sale money after payment of any mortgages if it has been sold;
 - (f) the Respondent's interest (if any) in a deposit in the amount of £870,000 paid for Flat 38/02 Pan Peninsula, West Tower, Canary Wharf, London E14; and/or
 - (g) any interest under any trust or similar entity including any interest which can arise by virtue of the exercise of any power of appointment, discretion or otherwise howsoever and the Respondent must not make any arrangement or take any steps which may prevent him from benefiting from any trust.
7. (1) If the total value free of charges or other securities ("unencumbered value") of the Respondent's assets in England and Wales exceeds £83,000,000, the Respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of the Respondent's assets still in England and Wales remains above £83,000,000.
- (2) If the total unencumbered value of the Respondent's assets in England and Wales does not exceed £83,000,000, the Respondent must not remove any of those assets from England and Wales and must not dispose of or deal with any of them. If the Respondent has other assets outside England and Wales, he may dispose of or deal with those assets outside England and Wales so long as the total unencumbered value of all his assets whether in or outside England and Wales remains above £83,000,000.

EXCEPTIONS TO THIS ORDER

13. (1) This Order does not prohibit the Respondent from spending £2,000 a week towards his ordinary living expenses and also £25,000 on legal advice and representation. But before spending any money the Respondent must tell the Applicant's legal representatives where the money is to come from.
- (2) This Order does not prohibit the Respondent from dealing with or disposing of any of his assets in the ordinary and proper course of business, but before doing so the Respondent must tell the Applicant's legal representatives.
- (3) The Respondent may agree with the Applicant's legal representatives that the above spending limits should be increased or that this Order should be varied in any other respect, but any agreement must be in writing.
- (4) The Order will cease to have effect if the Respondent-
- (a) provides security by paying the sum of £83,000,000 into Court, to be held to the order of the Court; or
 - (b) makes provision for security in that sum by another method agreed with the Applicant's legal representatives.

COSTS

14. The costs in relation to this Freezing Injunction are payable by the Respondent pursuant to the Court's Order of 13 September 2012.

VARIATION OR DISCHARGE OF THIS ORDER

15. Anyone served with or notified of this Order may apply to the Court at any time to vary or discharge this Order (or so much of it as affects that person), but they must first inform the Applicant's solicitors. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Applicant's solicitors in advance.

INTERPRETATION OF THIS ORDER

16. A Respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
17. A Respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

PARTIES OTHER THAN THE APPLICANT AND RESPONDENT

18. **Effect of this Order**

It is a contempt of court for any person notified of this Order knowingly to assist in or permit a breach of this Order. Any person doing so may be imprisoned, fined or have their assets seized.

19. **Set off by banks**

This injunction does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the respondent before it was notified of this Order.

20. **Withdrawals by the Respondent**

No bank need enquire as to the application or proposed application of any money withdrawn by the Respondent if the withdrawal appears to be permitted by this Order.

21. **Persons outside England and Wales**

- (1) Except as provided in paragraph (2) below, the terms of this Order do not affect or concern anyone outside the jurisdiction of this Court.
- (2) The terms of this Order will affect the following persons in a country or state outside the jurisdiction of this Court-
- (a) the Respondent or his officer or agent appointed by power of attorney;

- (b) any person who-
 - (i) is subject to the jurisdiction of this Court;
 - (ii) has been given written notice of this Order at his residence or place of business within the jurisdiction of this Court; and
 - (iii) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this Order; and
- (c) any other person, only to the extent that this Order is declared enforceable by or is enforced by a court in that country or state.

22. Assets located outside England and Wales

Nothing in this Order shall, in respect of assets located outside England and Wales, prevent any third party from complying with-

- (1) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the Respondent; and
- (2) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the Applicant's solicitors.

COMMUNICATIONS WITH THE COURT

All communications to the Court about this Order should be sent to Room EB09, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The telephone number is 020 7947 6826.

The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

SCHEDULE B

UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) If the Court later finds that this Order has caused loss to the Respondent, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any Order the Court may make.
- (5) Anyone notified of this Order will be given a copy of it by the Applicant's legal representatives.
- (6) The Applicant will pay the reasonable costs of anyone other than the Respondent which have been incurred as a result of this Order including the costs of finding out whether that person holds any of the Respondent's assets and if the Court later finds that this Order has caused such person loss, and decides that such person should be compensated for that loss, the Applicant will comply with any Order the Court may make.
- (7) If this Order ceases to have effect (for example, if the Respondent provides security) the Applicant will immediately take all reasonable steps to inform in writing anyone to whom he has given notice of this Order, or who he has reasonable grounds for supposing may act upon this Order, that it has ceased to have effect.
- (8) The Applicant will not without the permission of the Court use any information obtained as a result of this Order for the purpose of any civil or criminal proceedings, either in England and Wales or in any other jurisdiction, other than this claim.

NAME AND ADDRESS OF APPLICANT'S LEGAL REPRESENTATIVES

The Applicant's legal representatives are-

Berwin Leighton Paisner LLP
Adelaide House,
London Bridge,
London EC4R 9HA,
United Kingdom

DX 92 London/Chancery Lane

Telephone: +44 (0)20 7760 1000
Fax: +44 (0)20 7760 1111
Mobile: 07515 919 814
Email: segun.osuntokun@blplaw.com

Reference: SOSU/ASTP

Payment schedule

CFO 200

Full case name, as it appears on the court order

Access Bank PLC (Claimant) v

(1) Erastus Bankole Oladipo Akingbola and Ors
(Defendants)

Name of court

High Court of Justice
Queen's Bench Division, Commercial Court

Date of court order

1 | 3 | 0 | 9 | 2 | 0 | 1 | 2

Claims no.

2009 Folio 1680

Fund no.

CFO/AC no.

23383877C

Current funds in court

Cash £

235,837.94

Basic £

Special £

Number of amendments
(max. 3) inc. nil return

The authentication stamp must not be signed
by the person who prepared the form.
Any amendments to the form must be
button sealed and initialed by the court.

Name and full postal address of payee or transferee (if different to reference)	Name and full postal address, sort code and account number	Amount
Access Bank PLC C/O Berwin Leighton Raisner LLP Adelaide House London Bridge London EC4R 9EA Ref: SOSU/ASTP/28884.00001	Barclays Bank Plc 50 Pall Mall London SW1A 1QA A/C Name: Berwin Leighton Raisner LLP Client a/c SCBP P.T.O	£236,837.94 plus any interest accrued.

Pursuant to the Order dated 13 September 2012 there be payment out of court to the Claimant of all funds in Court in this action amounting to £236,837.94 as at 13 April 2012 plus any further interest accrued.

If necessary continue overleaf

Signed _____
Master/District Judge/Practitioner

How to contact the Court Funds Office

Customer Helpline: 0845 223 8500
Email: enquiries@cfco.gsi.gov.uk

Address:
Court Funds Office,
Glasgow, G68 1AB

Court Funds Office,
DX 501757, Cowglen

Claim No. 2009 Folio 1680

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

COMMERCIAL COURT

13 September 2012

The Honourable Mr Justice Burton

BETWEEN

ACCESS BANK PLC
Claimant

-and-

(1) ERASTUS BANOLE OLAPIDO AKINGBOLA
(2) KAYMAN COMPANY LIMITED
(3) VERNDALE PROPERTIES LIMITED
(4) JASMINE PROPERTIES LIMITED
(5) CAELUM LIMITED
(6) SANAMI LIMITED
Defendants

ORDER

Berwin Leighton Paisner LLP
Adelaide House
London Bridge
London
EC4R 9HA

Reference: SOSU

Solicitors for the Claimant

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2014

BETWEEN:

ACCESS BANK PLC

Plaintiff

- and -

ERASTUS BANKOLE OLADIPO AKINGBOLA

Defendant

Exhibit 3



IN THE COURT OF APPEAL, CIVIL DIVISION

REF: A3/2012/2533



ACCESS BANK PLC -v- ERASTUS BANKOLE OLADIPO AKINGBOLA

ORDER made by the Rt. Hon. Lord Justice Toulson

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision: granted, refused, adjourned. An order granting permission may limit the issues to be heard or be made subject to conditions.

Refused.

Reasons

Ground 7 – Procedural irregularities

In order to consider fairly and properly the submissions under this made by the applicant's leading counsel, I have read the transcripts of the evidence of the applicant, Mrs Ayinde, Mr Fabunmi and Mr Dada (witnesses for the applicant), paying particular attention to the schedule of interventions attached to the skeleton argument.

I have looked more shortly at the transcripts of the evidence of Mr Jimoh and Mr Aro (witnesses for the claimant/respondent), in order to form an impression of the nature and effect of the judge's interventions (guided again by the schedule of interventions).

In relation to the claimant's witnesses, I can understand the applicant's counsel's frustration at the number of interventions by the judge, but I do not see that they prevented him from properly probing the witnesses' evidence, although the process may have been slowed.

In relation to the applicant's witnesses, I see grounds for criticism of the nature and extent of the judge's interventions, more noticeably in the later stages of the evidence of the applicant (who gave evidence for 8 days) than in the earlier stages, and in parts of the evidence of Mr Fabunmi and Mr Dada.

Although the initial interventions were generally understandable, because it was a complex case and the judge wanted to understand the evidence as it developed, too frequently the questioning continued to the point of becoming cross examination. However the witnesses appear to have been able to get their points across in answer to the judge's questions, and I do not consider that the overall effect of the judge's interventions was as far reaching as the applicant argues, i.e. to render the trial unfair.

Grounds 1-6

The judgment was fully and clearly reasoned, and there was ample evidence to support the judge's conclusions. I see no prospect of the applicant succeeding on any of these grounds for the reasons summarised in the respondents' notice of objection.

Information for or directions to the parties

This case falls within the Court of Appeal Mediation Scheme automatic pilot categories*. Yes No

Recommended for mediation Yes No

If not, please give reason: